

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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KITSAP COUNTY TRANSPORTATION COM-  
PANY, a Corporation,

Appellant,

vs.

ELLA J. HARVEY, Claimant of the Gas Screw  
"SUQUAMISH," Her Tackle, Apparel and  
Furniture,

Appellee.

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**Apostles on Appeal.**

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Upon Appeal from the United States District Court for  
the Western District of Washington, Northern Division.

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**FILED**

JUL 16 1926

F. D. MONCKTON,  
CLERK



United States  
Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

BYERS & BYERS and JOHN A. HOMER, 310  
Marion Building, Seattle, Washington,

Proctors for Petitioner, Kitsap County  
Transportation Company, Appellant.

HERMAN S. FRYE and WINTER S. MARTIN,  
2014 L. C. Smith Building, Seattle, Washing-  
ton,

Proctors for Ella J. Harvey, Claimant,  
Appellee. [1\*]

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 9609.

In the Matter of the Petition of KITSAP  
COUNTY TRANSPORTATION COM-  
PANY, a Corporation of the State of Wash-  
ington, Owner of the Gas Screw "SUQUA-  
MISH," Her Tackle, Apparel and Furni-  
ture, for Limitation of Liability.

KITSAP COUNTY TRANSPORTATION COM-  
PANY, a Corporation,

Petitioner,

vs.

ELLA J. HARVEY,

Claimant.

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\*Page-number appearing at foot of page of original certified  
Apostles on Appeal.

STATEMENT.

- June     4, 1925.     This suit was commenced by the filing of a petition for Limitation of Liability by the Kitsap County Transportation Company, a corporation of the State of Washington, owner of the Gas Screw "Suquamish," her tackle, apparel and furniture.
- June     4, 1925.     Petitioner filed stipulation for costs and notice.
- June     5, 1925.     Order entered and filed appointing appraisers.
- June     9, 1925.     Notice of appraisement, oath of appraisers and report of appraisers filed and entered.
- June     9, 1925.     Order for stipulation for value filed and entered.
- June     9, 1925.     Stipulation for value filed and entered.
- June    10, 1925.     Order for monition filed and entered.
- June    10, 1925.     Issued monition and copy and certified copy of order.
- June    12, 1925.     Filed Marshal's return on monition.
- Sept.   11, 1925.     Deposition of Ella J. Harvey filed.     [2]

- Sept. 26, 1925. Appearance, stipulation for costs and answer of Ella J. Harvey, filed and entered.
- Oct. 3, 1925. Objections to claim of Ella J. Harvey filed. Entered Mo. Calendar.
- Oct. 24, 1925. Claim for damages for personal injuries of Ella J. Harvey filed.
- Oct. 24, 1925. Return of Commissioner Bowman on order *re* filing of claims.
- Oct. 26, 1925. Entered order, objections stricken.
- Nov. 3, 1925. Entered order for assignment Nov. 23, 1925.
- Feb. 15, 1926. Entered order for trial, Feb. 26, 1926.
- Feb. 24, 1926. Entered order for trial at foot of admiralty calendar.
- March 16, 1926. Entered record day's trial, 2 petitioner's exhibits. (Taken under advisement.)
- March 31, 1926. Filed memo. decision. Petitioner's motion denied. Claimant's motion granted. Proceedings dismissed.
- April 3, 1926. Filed cost bill. (Taxed at \$43.70.)
- April 5, 1926. Filed petition for rehearing and for new trial.
- April 8, 1926. Filed motion for new trial. Notice thereon.

4      *Kitsap County Transportation Company*

- April 12, 1926. Entered argument on motion for new trial. Authorities to be submitted.
- April 13, 1926. Filed brief on motion for new trial and petition [3] for rehearing. (Denied.)
- April 13, 1926. Filed exceptions of petitioner.
- April 13, 1926. Filed and entered final decree. Costs to claimant.
- April 13, 1926. Docket and index.
- June 2, 1926. Filed notice of appeal.
- June 2, 1926. Notice of appeal served as per acceptance noted on original notice.
- June 2, 1926. Filed bond on appeal with approval as to sureties by claimant's proctors and approval of Court noted thereon.
- June 2, 1926. Filed assignments of error.
- June 2, 1926. Assignments of error served as per acceptance of service noted on original.
- June 2, 1926. Filed stipulation as to record and apostles on appeal.
- June 2, 1926. Filed stenographic transcript of evidence and proceedings of trial, with stipulation of proctors attached thereto as to correctness and waiver of certificate of trial Judge thereto.
- June 2, 1926. Filed stipulation as to sending up original exhibits.

- June 2, 1926. Entered order sending up with appeal original exhibits.
- June 2, 1926. Filed praecipe for record and apostles on appeal. [4]
- June 2, 1926. Issued citation on appeal.
- June 2, 1926. Citation on appeal served as per acceptance of service noted thereon.

[Endorsed]: Filed Jun. 2, 1926. [5]

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In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 9609.

In the Matter of the Petition of KITSAP COUNTY TRANSPORTATION COMPANY, a Corporation of the State of Washington, Owner of the Gas Screw "SUQUAMISH," Her Tackle, Apparel and Furniture, for Limitation of Liability.

PETITION FOR LIMITATION OF LIABILITY.

The libel and petition of the Kitsap County Transportation Company, owner of the gas screw "Suquamish" in a cause of action, civil and maritime, alleges as follows:

I.

That your petitioner is a corporation duly organ-

ized, created and existing under and by virtue of the laws of the State of Washington, having its principal place of business in Seattle, Washington, and is the owner of the gas screw "Suquamish," which said vessel is now in the port of Seattle and within the jurisdiction of this Honorable Court.

## II.

That on or about the 7th day of December, 1923, while the said gas screw "Suquamish" was on a voyage from Seattle, King County, Washington, to Manitou, Kitsap County, Washington, the said vessel being engaged in commerce upon the navigable waters of the United States upon the waters of Puget Sound, an accident happened on board the said vessel and a claim has been made against the said vessel and a suit thereupon has been brought as hereinafter more fully set forth, on account of defects in the said vessel and in the management of the said vessel. [6]

## III.

That the said defects complained of in the said vessel were in truth and in fact a part of the original structure of said vessel and were at all times plainly visible to anyone in the cabin provided for the accommodation of passengers, and the said vessel was at said time manned and equipped in full compliance with the laws of the United States and the rules of navigation in such case made and provided and she had each, every and all of the lights, equipment and appliances required by said rules and laws and was fully found in every particular, and was constructed in all particulars in compliance

with the rules established by the laws of the United States.

IV.

That the said vessel, at the said time had fourteen passengers on board and had earned the sum of \$4.90 as fares, and had earned as freight on the said voyage the sum of no dollars, and was in command of Capt. W. O. Hanson, duly licensed and in full compliance with the laws of the United States and the rules of navigation in such case made and provided, and neither her owner nor any representative of her owner was present on the said vessel at the time of the said accident, nor had any knowledge of such accident or the cause thereof until after the time of its occurrence, and the said accident happened and the loss, damage and injury complained of was occasioned, done and incurred without the privity of knowledge of your petitioner. Nevertheless a certain passenger on the said vessel, to wit: Ella J. Harvey, claims to have been injured by the negligence of your petitioner, and claiming to have suffered losses by personal injuries has brought suit against your petitioner in the Superior Court of King County, State of Washington, to recover damages on account of said personal injuries and from various causes arising out of said accident and will continue to prosecute your petitioner unless restrained by this Honorable Court.

[7]

V.

That your petitioner is ignorant of the extent of the injuries or losses suffered by the said pas-

senger claiming to have been injured by the said accident except that the said passenger claims to have been injured in the sum of \$12,500.00, and that Reames & Frye, attorneys at law, 1323 L. C. Smith Building, Seattle, Washington, are her attorneys, and your petitioner alleges that the amount of the said claim for said injury, loss or damage, occasioned by the said accident greatly exceeds the value of the said gas screw "Suquamish" immediately after said accident, as hereinabove set forth, and any damage or injury done or occasioned or happening to the said claimant was due wholly to her own negligence and lack of care.

WHEREFORE, your petitioner prays that this Honorable Court will cause due appraisalment to be had of the value of the said vessel in the condition in which she was immediately after the said accident and upon the ascertainment of said value, make an order for the payment thereof into court, or the giving of a stipulation with sureties thereto, for the payment into said court whenever the same shall be ordered, and will issue a monition against all persons claiming damages for any loss, destruction, damages or injuries occasioned by said accident, citing them to appear before this court and make due proof of their claims at a time therein to be mentioned, and as to all of which claims your petitioner will contest its liability independently of the limitation of liability claimed under the acts and statutes aforesaid, and also that the Court will designate a commissioner before whom proof of all claims presented in pursuance of such monition



shall be made and upon the coming in of the report of said commissioner and of the hearing of the said cause, if it shall appear that this petitioner is not liable for such loss, damage, destruction or injuries, it may be so finally decreed, or in case the Court shall find that your petitioner is liable for said [8] loss, damage, destruction or injuries, then this Court will, by its decree, limit the liability of your petitioner to its interest in the said vessel and that in the meantime and until the final judgment of this Court shall be rendered therein, this Court will make an order restraining the prosecution of any suit or suits against your petitioner in respect to any such claim or claims.

BYERS & BYERS,  
Proctors for Petitioner.

State of Washington,  
County of King,—ss.

B. S. Murley, being first duly sworn, says that he is the Secy. & Treas. of the above-named petitioner and makes this verification on its behalf; that he has read the foregoing petition, knows the contents thereof and that the *said* is true except as to those matters set forth on information and belief and as to those matters he believes it to be true.

[Seal] BERT S. MURLEY.

Subscribed and sworn to before me this 3d day of June, 1925.

ALPHEUS BYERS,  
Notary Public, Residing at Seattle.

[Endorsed]: Filed Jun. 4, 1925. [9]

[Title of Court and Cause.]

ANSWER TO PETITION FOR LIMITATION  
AND CLAIM FOR DAMAGES FOR PER-  
SONAL INJURY.

To the Honorable Judges of the District Court of  
the United States for the Western District of  
Washington in the Northern Division, Sitting  
in Admiralty:

The claim and answer of Ella J. Harvey, of Seat-  
tle, in the State of Washington, to the petition of  
the Kitsap County Transportation Company, filed in  
the above cause, is as follows:

I.

Claimant admits paragraphs I and II of the peti-  
tion.

II.

Claimant admits in answer to paragraph III of  
the libel and petition, that said defects of and in  
said vessel complained of were in fact part of the  
original structure and hull of said vessel, that is to  
say, that in the cabin of said vessel set aside for  
the carriage and accommodation of women passen-  
gers, which was located in the hull and hold of said  
vessel, a raised horizontal platform was built about  
ten inches above the plane of the cabin deck ranging  
fore and aft, and extending inboard from the ship's  
side a distance of about four feet in order to pro-  
vide a place for seats for passengers. That the  
seats extend athwartship or at right angles to the  
keel, in rows, upon said raised platform; that the

rows are placed close together making it more or less difficult [10] for a person to enter the space between the rows of seats. That each row of seats is placed flush with and perpendicular to the side of the raised platform, so that the platform and each row of seats rises abruptly from the deck, and no place, or platform, is provided for a passenger to step upon before stepping into the narrow and restricted space between the rows of seats, while seating herself in the passenger seat provided for her accommodation. That the seats so provided were small and cramped and the space between the rows occupied by the body of the passenger to such an extent that in the case of a woman passenger attired in feminine apparel with the lower part of her person covered with skirts, she could not readily or easily see the platform and the place where it abruptly ends and descends to the main-deck.

That claimant denies that said defects and imperfections were at all times plainly visible, and denies that said vessel was at said time equipped, or manned, in full compliance with the laws of the United States, as set out in said paragraph III of the petition, for the reason that the petitioner well knew the design and build of the platform, and the arrangement of chairs and rows of chairs for the accommodation of women passengers when it adapted said vessel so arranged to the carriage of passengers for hire, and said arrangement was then and there dangerous and unsafe when adapted to ordinary use by women passengers, all of which petitioner then and there, and for a long time prior

thereto well knew. That this dangerous and unsafe condition was from time to time increased and rendered greater by the movement and oscillations of the hull of the vessel while afloat and underway, all of which the owner knew. That said vessel was and is a merchant motor vessel of the United States of 75 gross and 51 net tons, 84 feet long, 14.7 feet wide and seven feet deep. [11]

That by reason of said defective and imperfect condition a passenger in the ordinary and usual manner of arising from or leaving said seat could not see the edge of the platform and was likely to step off suddenly or slip from the platform to the dock in the act of stepping off the platform. That unless a person was warned or constantly reminded of the abrupt descent at the inboard end of the row of seats the passenger would in the ordinary and careful use of the seats and place set apart for them, be likely to step over and off of the platform to his or her resulting injury. That no warning, or notice, of any kind was posted or given to the claimant warning against stepping off of the platform, when she occupied the same, as hereinafter set forth. That by reason of the foregoing premises, the said raised platform, chairs and rows of chairs constituted defects and imperfections in the hull of said vessel in that part thereof especially designed for the accommodation of women passengers within the meaning of Section 4493 of the Revised Statutes of the United States.

### III.

Claimant is without sufficient information, or

knowledge, to enable her to answer the allegations of paragraph IV, which commence at line 13 on the second page of the libel and continue to the word "occurrence" in line 22, and therefore denies the same and puts petitioner upon its proof. Claimant denies that "the loss, damage and injury complained of," was without the privity, or knowledge of the petitioner, but on the contrary alleges and avers that petitioner at all times prior to claimant's injury knew of the faulty, defective and imperfect design, build, and arrangement of the said seating platform and its chairs and equipment, when it adapted said "Suquamish" to the carriage of passengers. That the platform so designed, built and equipped, was part of the [12] lower cabin deck and hull of said vessel. That the remaining allegations of paragraph IV of the libel and petition are true.

#### IV.

Answering paragraph V of the libel and petition, claimant admits making claim and commencing suit against petitioner. That the amount now demanded is Twelve Thousand Two Hundred and Fifteen and 50/100 (\$12,215.50) Dollars. That claimant is without sufficient information to enable it to answer the remaining allegations of paragraph V, except that it admits the vessel to have been fairly appraised at ——— Dollars, if a limitation is granted.

#### V.

That claimant has filed her affidavit and claim duly verified before the Hon. A. C. Bowman, United States Commissioner, in and for the above

District, to whom claim and proof of damage must be made under the monition issued upon the above-entitled petition, within the time allowed therefor, and now presents its claim and answer in the above court and cause for the purpose of contesting petitioner's right to a limitation of liability, and its further right to an exemption from liability.

## VI.

That claimant in filing her claim in the above-entitled cause and in answering the petition and libel of the petitioner does not intend to confer jurisdiction upon this court to hear and determine the said cause upon its merits for the reason that an action is now pending in the Superior Court of the State of Washington, for King County, in that said Cause No. 178602 entitled, "Ella J. Harvey, Plaintiff, vs. Kitsap County Transportation Company, a Corporation, Defendant," and unless by lapse of time and loss of witnesses it becomes necessary to submit plaintiff's claim and [13] demand to the above court in order that full justice may be done to claimant, and claimant makes this further answer, claim and demand to the said petition without prejudice to assert and maintaining its cause of action now pending in the Superior Court in the event plaintiff's petition for a limitation of liability be denied.

Thereupon claimant alleges and avers further as follows, to wit: That petitioner was and on and prior to the 7th day of December, 1923, a corporation organized under the laws of Washington which maintained an office for the transaction of business at

Seattle, King County. That it was then and there engaged in business as a common carrier of passengers, then and there operating and managing the said steamship "Suquamish" on a passenger run from Seattle, King County, to Manitou in Kitsap County, Washington. That said steamship, "Suquamish," was on said day unfit, unsafe, defective, insufficient and imperfect within the meaning of Section 4493 of the Revised Statutes of the United States for the carriage of passengers for hire, in that the place set aside for the seating accommodation of passengers was dangerous, unsafe, defective and insufficient for the reasons hereinabove set forth, all of which are referred to for the details thereof.

#### VII.

That on the 7th day of December, 1923, said claimant, while a passenger on said steamboat as aforesaid, did descend into the cabin of said steamboat and take a seat on the platform thereon. That said claimant on said occasion did not then and there see or notice that the raised platform, where the seats were located, was above the plane of the main-deck. That while seated as aforesaid in the seats as above described, she could not see and did not see the edge of the platform where she was sitting and did not notice that the deck was in fact lower than the platform she was then [14] sitting and resting upon. That claimant in attempting to rise from her seat stepped or slipped off of said platform down to the deck below and falling thereon broke her left hip and left wrist.

VIII.

That claimant was at the time of her injury seventy-five years of age, in good physical condition, and then and there had an expectancy of life of ——— years.

IX.

That as a result of the carelessness and negligence of the said defendant in the construction and accommodation provided, and through the defects and imperfections of the hull of said vessel, and its equipment, and parts thereof, claimant was injured as aforesaid, and as a result of said fall and injury was damaged as hereinafter set forth, to wit:

That she has been confined to her bed ever since the day of her injury. That by reason of the severity of the fracture to claimant's left hip, she has been permanently injured and will be required to use crutches for the remainder of her life. That as a result of her said injury, claimant was confined to her bed approximately eighteen months from the time of said injury, and is now compelled to use a wheeled chair and crutches. That during said time she has suffered great pain and distress in body and mind as a result thereof. That she has required the care of nurses and the constant treatment of physicians. That her nurses, hospital and physicians' bills, medicine, and the expenses incurred incidental thereto are and were as follows, to wit:



Doctor bills .....	\$550.00
Ambulance .....	11.00
Wheeled chair .....	17.50

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Carried ford. .... \$578.50

[15]

Brot ford. .... \$578.50

Hospital bills .....	561.00
Medicines .....	25.00
Nurse hire .....	1051.00

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Total ..... \$2,215.50

That in addition to the foregoing items of damage, claimant has sustained a damage of \$10,000 for her pain, suffering personal injuries and permanent disability during the period of her expectancy.

WHEREFORE claimant having fully answered the petitioner's petition for limitation of liability and for exemption for liability in the above cause prays:

1. That said limitation be disallowed for the reasons herein set forth.
2. That the prayer of said petition be denied; that the injunction be vacated, and claimant be permitted to prosecute her suit at law now pending in the Superior Court of the State of Washington for King County as hereinbefore alleged and pleaded.
3. That in the event a limitation of liability be granted, that your claimant and respondent have and recover damages in proportion to the amount which shall properly be awarded her upon the limitation value, and that a decree be entered holding

the petitioner liable for plaintiff's injuries and requiring it and its sureties to pay the amount awarded, together with claimant's costs and disbursements in said cause.

WINTER S. MARTIN,  
HERMAN S. FRYE,  
Proctors for Claimant. [16]

United States of America,  
Western District of Washington,  
Northern Division,—ss.

Herman S. Frye, being first duly sworn, upon his oath deposes and says:

That he is the attorney and proctor for the claimant above named; that he has read the foregoing answer to petition for limitation and claim for damages for personal injury and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That affiant makes this verification for and on claimant's behalf for the the reason that Ella J. Harvey is now within the Western District of Washington.

HERMAN S. FRYE.

Subscribed and sworn to before me this 25th day of September, 1925.

[Seal] WINTER S. MARTIN,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: Filed Sep. 26, 1925. [17]

[Title of Court and Cause.]

OBJECTIONS TO CLAIM OF ELLA J. HARVEY.

Comes now the petitioner herein and objects to the claim of Ella J. Harvey, the claimant, on the ground and for the reason as set forth in the petition for limitation of liability herein and for the further reason that if the said claimant has suffered any damages, as in her claim alleged, it was on account of her own negligence and lack of care, and not on account of any fault or lack of care of this petitioner.

BYERS & BYERS,  
Proctors for Petitioner.

State of Washington,  
County of King,—ss.

Bert S. Murley, being first duly sworn, on oath deposes and says: That he is the secretary of the petitioner above named; that he has read the foregoing objections to the claim of the claimant Ella J. Harvey herein, and that the statements made therein are true.

BERT S. MURLEY.

Subscribed and sworn to before me this 2d day of October, 1925.

ALPHEUS BYERS,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Due service hereof by copy admitted this 3d day of October, 1925.

HERMAN S. FRYE,  
Proctor for Claimant, Ella J. Harvey.  
R.

[Endorsed]: Filed Oct. 3, 1925. [18]

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[Title of Court and Cause.]

### DECISION.

These are usual proceedings and pleadings in limitation of a ship owner's liability, wherein is but one claimant. At the conclusion of the evidence each party moves to dismiss the other's case.

The evidence discloses that petitioner built and for 14 years has operated the "gas screw" vessel "Suquamish" in the passenger trade upon Puget Sound. She is of 75 gross tons, with capacity for 146 passengers. Below her main-deck and reached by stairs from it is a passenger cabin extending for the greater part of the vessel's length. Down the center of this cabin is an aisle about 4 feet wide, on each side of which, raised 10 inches, is a platform. These platforms are about 4 feet wide, extend to the sides of the vessel, and from end to end are occupied by seats, in lines transverse to them. The seats are like theatre seats, two in line, are 29 inches from back to back (front to rear), and the aisle seats are about 2 inches from the edges of the platforms. This construction was adopted to afford head clearance over the aisle, to enable pas-

sengers to see out the windows, and to afford space for 2 seats otherwise prevented by the curvature of the sides of the vessel. As passengers, Harvey and her daughter occupied adjoining seats, the former the aisle seat. Arriving at the landing, Harvey failed to successfully navigate the step down to the aisle, fell, and suffered severe injuries. Thereupon in a state court and against petitioner, Harvey brought suit for damages, alleging her injuries were due to petitioner's negligence in construction of aisle and platform as aforesaid. These instant proceedings followed. [19]

The statutes which limit ship owners' liability and to which petitioner appeals, are §§4283, 4493, R. S. The first avails owners against every person in respect to any default of shipmaster or crew, "without the privity or knowledge" of the owner, and the second likewise. That is to say, that so far as here involved, these statutes do not relieve owners from liability for any *their own* negligence, the second section "only declaring in the particular case, what is two in all, that if the injury or loss occurs through the fault of the owner he will be personally liable, and cannot have the benefit of limited liability."

Butler vs. Co., 130 U. S. 527;

Faxon, 75 Fed. 312.

Now, in the instant proceedings it is very clear that if claimant is entitled to recover, it is because of a condition of the *hull* (see *The Europe*, 175 Fed. 608, 190 Fed. 479) of the vessel, which was actually created and maintained by petitioner—be-

cause of and by reason of known defects and imperfections. Hence, all within petitioner's privity and knowledge. That is to say, the grounds upon which alone a ship owner's liability can be limited are conspicuously absent. That ends these proceedings. For "if, in those proceedings it should appear that the disaster did happen with his privity and knowledge, \* \* \* he would not obtain a decree for limited liability."

Butler vs. Co., *supra*.

The principal object of the proceedings having failed, the incidentals fail with them; and claimant is entitled to pursue her common-law remedy and case,—if she has any. See *The Erie Lighter* 108, 250 Fed. 490; *Weishaar vs. Co.*, 128 Fed. 397; *Certiorari denied*, 194 U. S. 638.

Petitioner's motion is denied, and claimant's is granted. Proceedings dismissed. Decree accordingly.

March 30, 1926.

BOURQUIN, J.

[Endorsed]: Filed Mar. 31, 1926. [20]

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[Title of Court and Cause.]

PETITION FOR REHEARING AND FOR  
NEW TRIAL.

To the Honorable Judge of the Above-entitled  
Court:

Comes now the Kitsap County Transportation  
Company, a corporation of the State of Washing-

ton, and respectfully petitions the Court to grant a new trial and rehearing herein on the ground and for the reason that the decision of the court heretofore made and entered herein is contrary to the law and the evidence.

This petition is based upon the files and records herein.

BYERS & BYERS,  
JOHN A. HOMER,  
Proctors for Petitioner.

Service hereof by copy admitted this 3 day of April, 1926.

HERMAN S. FRYE,  
Proctor for Claimant.

Denied.

BOURQUIN, J.

[Endorsed]: Filed Apr. 5, 1926. [21]

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United States District Court, Western District of  
Washington, Northern Division.

IN ADMIRALTY—No. 9604.

In the Matter of the Petition of KITSAP  
COUNTY TRANSPORTATION COM-  
PANY, a Corporation of the State of Wash-  
ington, Owner of Gas Screw "SUQUAM-  
ISH," for Limitation of Liability.

FINAL DECREE.

Upon final hearing of the petition for limita-  
tion of liability in the above-entitled cause, the

petitioner being represented by its officers and proctor, and claimant and respondent, Ella Harvey, being represented by her proctors, the said parties having submitted their proof upon issues of the cause, the Court after hearing and argument now considers and decrees:

That said petition for the limitation of liability be denied and said cause be and it is hereby dismissed.

IT IS FURTHER DECREED that the injunction and restraining order heretofore issued as of course in the above cause against Ella J. Harvey, and all other persons restraining and enjoining her and said persons from prosecuting her cause or any cause of action against petitioner in the Superior Court of Washington for King County, or in any other court, be and it is hereby vacated, set aside and held for naught.

IT IS FURTHER DECREED that claimant, Ella J. Harvey, have and recover her taxable costs and disbursements in the above cause.

Done at Chambers this 13th day of April, 1926.

BOURQUIN,

United States District Judge.

Copy received this April 2d, 1926.

BYERS & BYERS,

[Endorsed]: Filed Apr. 13, 1926. [22]



[Title of Court and Cause.]

EXCEPTIONS OF PETITIONER.

Comes now the Kitsap County Transportation Company, the petitioner herein, and hereby excepts as follows:

I.

Excepts to the failure and refusal of the Court to make and enter findings of fact herein.

II.

Excepts to the refusal of the Court to find that the petitioner was not guilty of negligence which caused or contributed to the injuries, if any, sustained by claimant.

III.

Excepts to the failure and refusal of the Court to find that if claimant sustained any damage or injury it was due to her contributory negligence which was the proximate cause of any injuries by her.

IV.

Excepts to the failure and refusal of the Court to find that there was no defect in the vessel or hull causing any damage or injury to claimant.

V.

Excepts to the failure and refusal of the Court to find and rule that any injuries or damage sustained by claimant were occasioned without any privity or knowledge on the part of petitioner.

VI.

Excepts to the refusal of the Court to grant a rehearing and new trial herein.

VII.

Excepts to the order of the Court denying petitioner's motion for a rehearing and new trial.

VIII.

Excepts to the form and substance of the order and decree signed herein dismissing petition for limitation of liability.

IX.

Excepts to the signing and filing of the decree herein dismissing the petition of the petitioner herein for limitation of liability.

X.

Excepts to the refusal of the Court to fix an amount for and authorizing the furnishing of a supersedeas bond herein by petitioner superseding the order and decree entered herein dismissing the petition.

BYERS & BYERS,  
JOHN A. HOMER,  
Proctors for Petitioner.

Each and all of the foregoing exceptions of the petitioner are hereby noted and allowed.

BOURQUIN,  
Judge.

[Endorsed]: Filed Apr. 13, 1926. [24]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To Ella J. Harvey and to Herman S. Frye and Winter S. Martin, Her Proctors, and to the Clerk of the Above-entitled Court:

You, and each of you, will please take notice that the Kitsap County Transportation Company, a corporation, hereby appeals from the final decree of the above-entitled court in the above-entitled cause, and from the whole thereof, which decree was made, entered and filed in said cause on or about the 13th day of April, 1926, to the United States Circuit Court of Appeals for the Ninth Circuit.

KITSAP COUNTY TRANSPORTATION  
COMPANY,

By BYERS & BYERS, and  
JNO. A. HOMER,

Its Proctors.

Copy of the within notice of appeal received this 2d day of June, 1926.

WINTER S. MARTIN,  
HERMAN S. FRYE,

Proctors for Ella J. Harvey, Claimant.

[Endorsed]: Filed Jun. 2, 1926. [25]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR ON BEHALF OF  
KITSAP COUNTY TRANSPORTATION  
COMPANY, PETITIONER.

I.

The Court erred in this: That it failed and refused to make and enter findings of fact.

II.

The Court erred in this: That it failed and refused to find and decide that the petitioner was not guilty of negligence which caused or contributed to the injuries, if any, sustained by the claimant.

III.

The Court erred in this: That it failed and refused to find and decide that if claimant sustained any damage or injury it was due to her contributory negligence which was the proximate cause of any injuries sustained by her.

IV.

The Court erred in this: That it failed and refused to make any finding or decision on the question of whether petitioner was guilty of negligence which caused or contributed to the injuries and damages, if any, sustained by claimant. [26]

V.

The Court erred in this: That it failed and refused to make any findings and decision on the question of whether claimant was guilty of contributory negligence which was the proximate

cause of the injuries and damages, if any, sustained by her.

VI.

The Court erred in this: That it held and decided that if claimant was entitled to recover it was because of the condition of the hull which was actually created and maintained by petitioner and because of and by reason of known defects and imperfections within petitioner's privity and knowledge.

VII.

The Court erred in this: That it failed and refused to find and decide that there were no defects in the vessel or hull which caused or contributed to the injuries and damages, if any, sustained by claimant.

VIII.

The Court erred in this: That it failed and refused to find and decide that the damages and injuries, if any, sustained by claimant, were occasioned without any privity or knowledge on the part of petitioner.

IX.

The Court erred in this: That it failed and refused to grant a rehearing and new trial, and overruled and denied petitioner's motion for a rehearing and new trial.

X.

The Court erred in this: That it entered herein an order, judgment and decree dismissing the petition of petitioner for limitation of liability and awarding costs against petitioner. [27]

XI.

That Court erred in this: That it failed and refused to authorize and fix the amount of a supersedeas bond herein superseding the order and decree herein dismissing petition of the petitioner.

KITSAP COUNTY TRANSPORTATION  
COMPANY,

By BYERS & BYERS and  
JNO. A. HOMER,

Its Proctors.

Copy of the within assignment of error received  
June 2d, 1926.

WINTER S. MARTIN,  
HERMAN S. FRYE,

Proctors for Ella J. Harvey, Claimant.

[Endorsed]: Filed Jun. 2, 1926. [28]

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[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS,  
That we, Kitsap County Transportation Company,  
a corporation, as principal, and Massachusetts  
Bonding & Insurance Company, a corporation, duly  
organized under the laws of the Commonwealth of  
Massachusetts, and authorized to do business as a  
surety company under the laws of the state of  
Washington, as surety, are held and firmly bound  
unto Ella J. Harvey in the full and just sum of  
Two Hundred and Fifty Dollars (\$250.00), to be  
paid to said obligee, or to her proctors, heirs, suc-  
cessors, executors, administrators or assigns, to

which payment, well and truly to be made, we bind ourselves and our successors, jointly and severally by these presents.

SEALED with our seal and dated this 2d day of June, 1926.

WHEREAS lately in the District Court of the United States for the Western District of Washington Northern Division, in a suit in admiralty depending in said court, In the Matter of the Petition of the Kitsap County Transportation (word Company omitted), a corporation, owner of the Gas Screw "Suquamish" her tackle, apparel and furniture, for limitation of liability, the Kitsap County Transportation Company, a corporation, petitioner, and Ella J. Harvey, claimant, a decree [29] was entered dismissing the petition of said Kitsap County Transportation Company and said principal to this obligation has appealed to remove said cause to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree in the aforesaid cause, and a citation having issued directed to said Ella J. Harvey, claimant, citing and admonishing her to be and appear in the said United States Circuit Court of Appeals in the City of San Francisco, California, on the 2 day of July, 1926,—

NOW, THEREFORE, the condition of the above obligation is such that if said principal shall prosecute its appeal to effect and pay the costs if said

appeal is not sustained, then the above obligation to be void; else to remain in full force and effect.

KITSAP COUNTY TRANSPORTATION  
COMPANY.

By BYERS & BYERS and  
JNO. A. HOMER,

Its Proctors.

MASSACHUSETTS BONDING AND IN-  
SURANCE COMPANY.

By H. S. JACKSON, [Seal]  
Attorney-in-fact.

The foregoing bond is hereby approved as to form and sufficiency of sureties and a copy thereof received this 2d day of June, 1926.

WINTER S. MARTIN,  
HERMAN S. FRYE,

Proctors for Ella J. Harvey, Claimant.

Approved.

NETERER,  
United States District Judge.

[Endorsed]: Filed Jun. 2, 1926. [30]

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[Title of Court and Cause.]

STIPULATION AS TO RECORD AND  
APOSTLES ON APPEAL.

It is hereby stipulated by and between Kitsap County Transportation Company, petitioner, through its proctors, Byers & Byers, and Ella J. Harvey, claimant, through her proctors, Herman S. Frye and Winter S. Martin, as follows, to wit:



Stipulations for costs were duly filed by petitioner and claimant, and that in making up the record on the appeal of petitioner to the Circuit Court of Appeals, that the apostles on appeal shall include and that the Clerk of the District Court shall include therein, the following and nothing more:

1. Caption exhibiting proper style of the court and title of the cause, names of the parties, etc.
2. Statement showing time of commencement of suit, etc.
3. Petition for limitation of liability of the Kitsap County Transportation Company.
4. Answer to petition for limitation of liability and claim for damages for personal injuries of Ella J. Harvey.
5. Objections of petitioner to claim of Ella J. Harvey.
6. Memorandum decision of Bourquin, Judge.
7. Petitioner's petition for rehearing and for new trial. [31]
8. Minute entry showing denial of petition for rehearing and for new trial.
9. Final decree of court.
10. Exceptions of petitioner.
11. Notice of appeal with admission of service.
12. Bond on appeal with notations of approval.
13. Transcript of trial, proceedings and evidence including deposition of Ella J. Harvey.
14. Stipulation as to evidence.

- 34 *Kitsap County Transportation Company*
15. Assignments of error with admission of service.
  16. Stipulation as to record and apostles on appeal.
  17. Stipulation as to transmittal of original exhibits.
  18. Order directing transmittal of original exhibits.
  19. Clerk's certificate.
  20. Citation on appeal, with admission of service.

Dated at Seattle, Washington, June 2d, 1926.

KITSAP COUNTY TRANSPORTATION  
COMPANY.

By BYERS & BYERS and  
JOHN A. HOMER,

Its Proctors.

HERMAN S. FRYE,  
WINTER S. MARTIN,

Proctors for Ella J. Harvey, Claimant.

[Endorsed]: Filed Jun. 2, 1926. [32]

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[Title of Court and Cause.]

STIPULATION AS TO TRANSMITTAL OF  
ORIGINAL EXHIBITS.

It is hereby stipulated by and between the Kitsap County Transportation Company, petitioner, through its proctors, Byers & Byers, and Ella J. Harvey, claimant, through Herman S. Frye and Winter S. Martin, that the original exhibits herein, to wit: Petitioner's Exhibit No. 1 (Certificate of

Inspection), and Petitioner's Exhibit No. 2 (Photograph), instead of copies thereof, shall be sent up by the Clerk of the District Court to the Circuit Court of Appeals as a part of the record on appeal herein.

Dated at Seattle, Washington, June 2d, 1926.

KITSAP COUNTY TRANSPORTATION  
COMPANY.

By BYERS & BYERS and  
JNO. A. HOMER,

Its Proctors.

HERMAN S. FRYE,  
WINTER S. MARTIN,

Proctors for Ella J. Harvey, Claimant.

[Endorsed]: Filed Jun. 2, 1926. [33]

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[Title of Court and Cause.]

ORDER FOR SENDING UP ORIGINAL EXHIBITS.

Agreeably to the written stipulation of the parties herein, and it being in the opinion of the undersigned Judge deemed proper that the Clerk of this court making up the record on appeal herein shall include therein as a part of the record on appeal the originals, instead of the copies of all exhibits, to wit: Petitioner's Exhibit No. 1 (Certificate of Inspection) and Petitioner's Exhibit No. 2 (Photograph), introduced in evidence in the trial of this cause; it is

ORDERED, That said original exhibits, instead of copies, shall be sent up by the Clerk of this court as a part of the record on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit.

Done at Chambers this 2d day of June, 1926.

JEREMIAH NETERER,  
United States District Judge.

[Endorsed]: Filed Jun. 2, 1926. [34]

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[Title of Court and Cause.] [35]

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PETITIONER'S EXHIBITS.

No. 1—Page 20—Certificate of Inspection.

No. 2—Page 47—Photograph. [36—1]

[Title of Court and Cause.]

PROCEEDINGS HAD MARCH 16, 1926.

BE IT REMEMBERED, that heretofore and on, to wit, March 16, 1926, at the hour of 2:00 o'clock, P. M., the above-entitled cause came on regularly for trial in the above-entitled court, and before the Honorable GEORGE M. BOURQUIN, one of the Judges of said court.

The petitioner appearing by Byers & Byers, their attorneys and counsel.

The claimant appearing by Messrs. H. S. Frye and Winter S. Martin, her attorneys and counsel.

Thereupon the following proceedings were had and testimony taken, to wit: [37—2]

TESTIMONY OF PHILIP D. MACBRIDE,  
FOR PETITIONER.

PHILIP D. MACBRIDE, a witness called in behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BYERS.)

Q. State your name, please.

A. Philip D. Macbride.

Q. Where do you reside?      A. In Seattle.

Q. How long have you resided here?

A. Practically 18 years.

Q. What position, if any, do you now occupy with the petitioner?      A. Vice-president.

(Testimony of Philip D. Macbride.)

Q. How long have you been connected with the Kitsap County Transportation Company?

A. Since the spring of 1917—April, 1917.

Q. You are acquainted with the vessel "Suquamish"? A. Yes.

Q. What position did you occupy on the 7th day of December, 1923?

A. Secretary and Treasurer of the Kitsap County Transportation Company.

Q. I will ask you, in regard to this vessel "Suquamish"—I will call your attention to the cabin of this vessel. Is the cabin constructed in the same manner as is usual and customary in vessels of this type and class?

Mr. MARTIN.—Your Honor, we object to that question. It is not material as to construction of other vessels.

The COURT.—Sustain the objection. [38—3]

Q. How long have you been engaged in the shipping business and especially in connection with this kind and class of vessels?

A. I have been acquainted with the Puget Sound steamboats and vessels for something over 13 years.

Q. Are you acquainted with vessels of this type and class on Puget Sound?

A. I know nearly all of them.

Q. I would like to ask you if this cabin is equipped as is usual of her type and class?

A. It has the standard type of equipment and construction.

Q. How long has this vessel been in operation?

(Testimony of Philip D. Macbride.)

A. It was constructed in 1914.

Q. Has it remained, as far as the seats are concerned—the way they are placed, from that time to this?   A. Yes, continuously.

Q. Has it been carrying passengers all the time?

A. It has been in continuous operation carrying passengers since it was first commissioned in the summer of 1914.

Q. How many passengers has it carried since that time?

Mr. MARTIN.—That is immaterial, your Honor.

The COURT.—Overrule the objection.

A. It has averaged 3,500 passengers a month, over 40,000 per year, which would make approximately half a million passengers.

Q. Were any of the officers of the company ever notified of, or did any accident of this kind ever occur theretofore?   A. No. [39—4]

Cross-examination.

(By Mr. MARTIN.)

Q. Mr. McBride, attention has been called to one cabin. This vessel has several, has it not?

A. Two.

Q. The one Mrs. Harvey was in, the after-cabin, is called the “Ladies” cabin, is it not?

A. That is right.

Q. The after-cabin is located down below the decks, is it not?

A. Yes—the main-deck is cut at that point.

Q. Then you have a fore-cabin or a smoker for men?   A. Yes.

(Testimony of Philip D. Macbride.)

Q. Is that on the same level as the after-cabin?

A. Approximately, not exactly.

Q. Then, have you an upper cabin where the people walk? A. No, those are the two cabins.

Q. And above that is the main-deck?

A. Not "main-deck." The roof of the ladies' cabin forms the boat-deck.

Q. This ladies' cabin, you say, has been in this same condition since the time it was built in 1914?

A. Yes.

Q. That cabin is arranged with a center aisle right above the keel, with a decking over the keel, but right above the keel, ranging fore and aft, in the center of the vessel?

A. Not decking, floor, the cabin floor. The center of the boat is the keel, and the floor is three feet above the keel.

Q. Now, this aisle has, on each side of it, a raised platform for seats, for the seats of the passengers, has it not? [40—5] A. That is right.

Q. This raised platform is about ten inches above the horizontal plane of the aisle, is it not?

A. The platform on either side, on which the seats are fastened is between nine or ten inches above the aisle down the center of the cabin.

Q. That aisle is how wide?

A. About four feet, I should think.

Q. And the platform, which is raised in the center alongside of the aisle to this height of nine or ten inches, runs off to nothing where it meets the sheer of the bilge as it comes up?



(Testimony of Philip D. Macbride.)

A. Yes, it extends over to the side of the vessel right below the windows.

Q. So that upon this platform is then arranged tiers of seats which run across the vessel at right angles to the keel?

A. Two seats on each side; pairs of theatre seats. The usual theatre seat, as you see them in the picture shows.

The COURT.—There are more than two seats on each platform?

Mr. MACBRIDE.—Oh, yes; thirty or forty.

Q. And these seats are at right angles to the keel?

A. Yes.

Q. So that the passengers can sit looking forward into the vessel? A. Yes.

Q. With windows on each side? A. Yes.

Q. And an aisle ranging fore and aft?

A. Yes. [41—6]

The COURT.—Do the seats all face the same way?

Mr. MACBRIDE.—All except at the very front of the cabin.

Q. There is one tier after another so that in sitting in one seat, the back of another seat is in front of you?

A. Yes. Except in the front end of the cabin, there are two seats facing back.

Q. It is a further fact in connection with this, is it not, that the seats are placed flush with the perpendicular side of this platform? Do the seats come right out flush?

(Testimony of Philip D. Macbride.)

A. No, the sides of the seats are set in, I should say an inch. Just enough to get security for the clamp on the bottom of the casting.

Q. And these seats all range one behind the other in this row, each seat being arranged in the manner that you described and each seat would be fastened to this raised platform an inch from the edge?

A. Something like that—very close to the edge, something like an inch.

Q. There is no appreciable place to step on as you enter the seat?

A. You step into the space. You step on to the platform.

Q. To step from the raised deck up ten inches in between the seats, you have no appreciable place to rest the foot on before going into the seat?

A. There would be no object in stepping on the outside of the casting.

Q. There is not room there and it was not so intended? A. No. [42—7]

Q. That condition has been true of your vessel every since it was built?

A. It is now in exactly the same condition as it was originally constructed.

Q. Now, when you were asked by counsel whether you ever had any complaints, you, of course, speak for the time since you joined this company in 1917?

A. I would not know anything about complaints before that time but I know there were no suits before that.

(Testimony of Philip D. Macbride.)

Q. Isn't it true that you have had complaints and that people have been hurt stepping down abruptly when leaving the seats and falling?

A. No, sir.

Q. That people have been injured?

A. No, sir.

Q. You never received a complaint?

A. No, sir.

Q. Do you know that Mr. Melvin Moses, on June 12th, fell headlong between the seats when he attempted to step out from one of them and was very severely shaken up and bruised? A. No, sir.

Q. Mr. Henkle was president of the company at that time?

A. Yes, he was president up until the time of his death.

Q. Didn't Mr. Henkle ever talk with you in connection with this case—the case of this other man who was hurt in the same manner? A. No.

Witness excused. [43—8]

### TESTIMONY OF L. H. COOLIDGE, FOR PETITIONER.

L. H. COOLIDGE, a witness called in behalf of the petitioner, having been first duly sworn, testified as follows:

#### Direct Examination.

(By Mr. BYERS.)

Q. State your name. A. L. H. Coolidge.

Q. Where do you reside? A. In Seattle.

Q. How long have you lived here?

(Testimony of L. H. Coolidge.)

A. About 30 years.

Q. What is your business, or profession?

A. Naval architect.

Q. How long have you been practicing your profession in this city?     A. Nineteen years.

Q. Are you acquainted with the gas screw "Suquamish"?     A. Yes.

Q. How long have you been acquainted with that vessel?     A. Ever since it was built.

Q. I will ask you if your profession has brought you in connection with the building of vessels of that type and kind?     A. Yes.

Q. Calling your attention to the after-cabin of the "Suquamish," I will ask you if that cabin is constructed as is usual in vessels of that type and class?

A. I think it is.

Q. How about the arrangement of the seats? Is that the usual and ordinary construction of vessels of that type and class? [44—9]

A. It is not unusual.

Q. I will ask you, Mr. Coolidge, if the seating facilities and the platform, or level space upon which they are placed, is any part of the hull of the vessel?

A. It is not.

Cross-examination.

(By Mr. MARTIN.)

Q. Is this vessel built with a keelson?

A. I could not say.

Q. You didn't have anything to do with building this vessel?

(Testimony of L. H. Coolidge.)

A. I had something to do with the installation of the engine.

Q. Are you familiar with the interior of the after-cabin? A. Yes.

Q. Can you tell, from an examination of the cabin, whether there is a raised keelson over the keel to which the timbers and frames are fastened.

A. Not without looking purposely—taking up the flooring.

Q. The fact is, the aisle flooring is built over the frames of the vessel right down on the skin of the vessel—right down on the timbers, as a matter of fact?

A. No, I would not say it was.

Q. What would the flooring rest on?

A. Rests on the frame.

Q. The fore and aft frames?

A. The main frame of the vessel.

Q. It would rest on the main frames?

A. The ends of the beams would.

Q. What is the reason for the raised platform on each side of the aisle?

A. Well, you get a lower center of gravity on the vessel by keeping [45—10] the floor as low as possible in the center, and also there is an opportunity for those in the seats to see out the windows by making a slight rise on each side.

Q. There is, however, no particular reason for not having a one flooring which would be level and run from one side of the ship to the other, is there?

(Testimony of L. H. Coolidge.)

A. Yes, for the reason just stated. It tends to raise the center of gravity.

Q. How much water does this vessel draw?

A. Approximately five feet.

Q. How high is the surface above the water, the freeboard? A. About 32 inches, I would say.

Q. The cabin rises from the main part of the vessel? A. Yes.

Q. Would ten inches difference on each side of the aisle make any material difference in the center of gravity in that vessel? A. Yes.

Q. How long is this vessel?

A. I think she is 87 feet.

Q. And she draws five feet of water? A. Yes.

Q. Ten inches would make some difference, would it not?

A. Yes, I cannot tell how much difference it would make at this time, but it would make a difference.

Q. Did you ever make any measurements on that vessel? A. No, I have no figures on it.

Q. Well, now, you have examined this vessel and you have made comparisons with other vessels on the Sound which carry passengers? [46—11]

Q. How many have a center aisle with a raised platform, ten inches on each side?

A. Three, I believe.

Q. What ones are they?

A. The "Dr. Martin," "The Falcon"—

Q. How long is the "Dr. Martin"?

A. I would say about 65 feet; I am not certain.

(Testimony of L. H. Coolidge.)

Q. How much water does she draw?

A. I could not say.

Q. How long is "The Falcon"?

A. Eighty-five feet, I would say.

Q. Well, what other one?

A. The other boat is one designed for parties here but she has not yet been constructed.

Q. You compared this vessel with two which are constructed and one which has not yet been constructed? A. Yes.

Q. And each was designed with the aft-cabin center aisle and raised platform on each side?

A. Yes.

Q. How many passenger vessels of this type are on the Sound? A. I could not say.

Q. Somewhere around one hundred?

A. Possibly so.

Q. And you call it a safe arrangement for the seats to be arranged to come right out flush with the perpendicular side of that platform?

A. I would say as safe as any other step made use of in vessel designing.

Q. You think that a better arrangement than to have the seats [47—12] set over to provide space at least for foot clearance so the passengers will have stepping room before going between the seats?

A. I would prefer this arrangement, or the arrangement in this boat, to that.

Q. The flush arrangement? A. Yes.

Q. Take this case, where a lady 75 years of age sets down between seats, momentarily forgetting the

(Testimony of L. H. Coolidge.)

drop, steps off, and sustains severe injuries—don't you think it would have been a better arrangement if the seats had been set over on the platform so as to have had space clear of the chairs?

Mr. BYERS.—Your Honor, we object *this* this as purely argumentative.

The COURT.—This witness is an expert and he may answer.

A. No, sir.

The COURT.—Did you measure the space between these seats?

Mr. COOLIDGE.—No, I didn't measure it with a rule.

The COURT.—What is your judgment as to the width between facings of the seats vertically?

Mr. COOLIDGE.—About four feet is the width of the aisle.

The COURT.—I mean between the rows of seats.

Mr. COOLIDGE.—About twenty-nine inches back to back.

The COURT.—Did you measure this distance?

[48—13]

Mr. COOLIDGE.—No, we have in our minds the general spacing for seats.

Witness excused.



TESTIMONY OF FREDERICK S. BRINTON,  
FOR PETITIONER.

FREDERICK S. BRINTON, a witness called in behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BYERS.)

Q. State your name.

A. Frederick S. Brinton.

Q. Where do you live?      A. In Seattle.

Q. How long have you lived here?

A. Since 1907.

Q. What is your business?

A. Naval architect.

Q. Are you acquainted with the gas screw "Squamish"?      A. Yes.

Q. Did you design and build her?

A. The work was done in our office.

Q. I will ask you, calling your attention to the after part of the vessel, if the seating arrangement and appliances or equipment on which to place the seats is a usual and standard type for that class of vessels?      A. Yes.

Q. The seating arrangement is the same now as the way you designed it?      A. Yes.

Q. And I would ask you if that equipment, the platform upon which the seats are placed, is that any part of the hull [49—14] of the vessel?

A. No, sir.

(Testimony of Frederick S. Brinton.)

Cross-examination.

(By Mr. MARTIN.)

Q. Isn't the platform built right over the timber frames, or ribs?

A. The platform touches the ribs on the outside—not part of the hull.

Q. Isn't the skin of the vessel part of the hull?

A. The cabin flooring is not part of the hull.

Q. What is the difference between the skin and the cabin floor?

A. The skin of the vessel is part of the structural part of the vessel intended to give the vessel strength. The cabin floor is the place for people to stand.

Q. When it is made fast to the frame of the vessel, doesn't it perform the same functions as the skin?

A. No, sir. The skin of the vessel is put on for two reasons—to keep out the water, and to give fore and aft strength; the cabin floor is for persons to stand on. The cabin floor does not touch the skin of the vessel.

Q. But isn't the skin under that?

A. Sure it is.

Q. The skin of the vessel corresponds on the inside lining the same as planking the outside lining?

A. There is no skin on this vessel.

Q. The skin of the vessel corresponds to the planking on the outside—the inside lining of the vessel? A. We haven't got any "skin."

(Testimony of Frederick S. Brinton.)

Q. I am not talking about this vessel—any vessel?  
[50—15]

A. We don't call it "skin." We call it "ceiling."

Q. Then the ceiling of the vessel is the inside lining? A. Yes.

Q. Placed over the ribs? A. Yes.

Q. And the ribs run at right angles to the keel?  
A. Yes.

Q. The outside planking covers the ribs?  
A. Yes.

Q. The inside ceiling covers the ribs on the inside? A. Yes, we have a ceiling.

Q. Haven't you heard the term "skin" used as "ceiling"? A. Not by a Naval Architect.

Q. By people generally?

A. I don't think so.

Q. Then on any vessel the ceiling is under the flooring? A. No.

Q. Then the flooring does come down on the timbers? A. Doesn't touch the timbers.

Q. To what is it made fast? A. The beams.

Q. So that there are beams that run at right angles with the keel?

A. Yes. The beams run right across the vessel.

Q. On the center aisle over the beams are placed fore and aft flooring? A. Yes.

Q. Do you, as a Naval Architect, Mr. Brinton, mean to say that this does not strengthen a vessel? A. It is not put there for that purpose.

[51—16]

(Testimony of Frederick S. Brinton.)

Q. Doesn't it serve that purpose? A. No, sir.

Q. You say it does not add strength to that vessel?

A. No. It would be just as strong if it didn't have the flooring in there.

Q. And then on each side of the center aisle is this raised platform ten inches in height?

A. Yes.

Q. Which extends out to the side of the vessel?

A. Yes.

Q. What does that rest on?

A. Flooring—cabin flooring.

Q. Now, are the seats on that raised platform flush with the perpendicular side of the platform along the aisle?

A. Approximately so.

Q. Why isn't some arrangement made for people to step on the platform so they might enter the space between the seats?

A. Didn't think it was necessary.

Q. You say this is the commonly accepted type on Puget Sound? A. Yes.

Q. To what vessel do you refer as having that platform?

A. Well, it is not original with us, there are quite a number of them.

Q. Well, what vessel is equipped and built in that manner—with the seats flush with a ten-inch platform?

A. The "Doctor Martin," the "Mercer" and I think the "Falcon" and a number of others.

(Testimony of Frederick S. Brinton.)

Q. There are several of the small vessels 60 to 100 feet long on the Sound—?

A. A large number, yes. [52—17]

Q. There are many more that have flat *plaint* decks—horizontal cabin-decks?

A. I could not say.

Q. How many of those vessels have you examined? A. Not very many.

Q. How many vessels have a horizontal cabin floor? A. I could not say.

Q. Yet, you attempt to say that this conforms to the ordinary standard type of construction on Puget Sound?

A. Yes. I have been on many such vessels, though I don't remember their names.

Q. Can't you give this Court some idea of the number?

A. I do not have it—most all the little launches have it that way.

Q. I am talking about vessels 80 and 90 feet long with two cabins, that draw five feet of water?

A. Something like one hundred on the Sound—something like that.

#### Redirect Examination.

(By Mr. BYERS.)

Q. Could this entire equipment, the seat and floor, be taken out and the hull remain the same?

A. Yes.

Q. —freight space installed and the hull be just the same? A. Yes.

Witness excused. [53—18]

TESTIMONY OF BERT S. MURLEY, FOR PETITIONER.

BERT S. MURLEY, a witness called in behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BYERS.)

Q. What is your name? A. Bert S. Murley.

Q. What is your position with the Kitsap County Transportation Company?

A. Secretary-treasurer.

Q. What was your position in 1923?

A. General Agent.

Q. At the time you were agent of the vessel—it came within your province—was your work—to see that the vessel had the proper personnel?

A. Yes.

Q. Did this vessel, at that time, on that date, December 7th, 1923, was it manned and equipped in compliance with the certificate of inspection which you had then? A. Yes.

Q. I offer you a copy, or what purports to be a copy, and will ask you to state if you know what this paper is? A. Yes, certificate of inspection.

Q. Was this vessel regularly inspected that year by the United States Inspectors? A. Yes.

Q. Did she pass the inspection? A. Yes.

Q. And it was in the same condition at the time this accident occurred that she was when inspected? A. Yes. [54—19]

(Testimony of Bert S. Murley.)

Mr. BYERS.—We offer this copy of the certificate of inspection in evidence, your Honor.

The COURT.—There is no objection. It may be admitted.

(Marked Petitioner's Exhibit 1.)

Cross-examination.

(By Mr. MARTIN.)

Q. You have been with this company how long, Mr. Murley?     A. Since 1916.

Q. And this vessel has been in the same condition, and is now, as with respects to the after-cabin, as when you joined this company?

A. Yes.

Q. Has a center aisle with a raised platform ten inches high on each side?     A. Yes.

Q. And with seats flush with this platform?

A. Yes, approximately so.

Q. The space between the chairs is twenty-nine inches?

A. Yes, I would judge it is. I would not say positively.

Q. There isn't room in sitting down in the seats for one person to pass another, is there?

A. No, not without rising.

Q. And a person in getting out of the seat would have to turn sideways and slide out from the seat and step down ten inches?

A. The seat could be turned up. You don't have to slide out of the seat.

Q. But if a person didn't see fit to raise the seat and then step down, they would have to slide out

(Testimony of Bert S. Murley.)

and reach down ten [55—20] inches before getting a firm footing?

A. No, there is room enough to stand up just the same as on a street-car.

Q. Did you ever have any complaints about anyone getting hurt as a result of the narrow space between the seats and the precipitous sides of the aisle? A. No.

Q. Not in June—

Mr. BYERS.—We object to that, your Honor, as not proper cross-examination.

The COURT.—Objection sustained.

Witness excused.

## TESTIMONY OF CHARLES E. TAYLOR, FOR PETITIONER.

CHARLES E. TAYLOR, a witness called in behalf of the petitioner, being first duly sworn, testified as follows:

### Direct Examination.

(By Mr. BYERS.)

Q. State your name.

A. Charles E. Taylor.

Q. What is your business, Mr. Taylor?

A. Shipbuilder.

Q. Where is your plant now?

A. Lake Washington Shipyard, at Hoquiam.

Q. And you are operating now, at the present time, a plant? A. Yes.

Q. And you have a large number of men employed there? A. Yes.



(Testimony of Charles E. Taylor.)

Q. Are you acquainted with this type and class of boat, as the gas screw "Suquamish." A. Yes.

Q. I would ask you if the arrangement of the seats is the [56—21] ordinary and usual arrangement and the standard type as used in that vessel? A. So far as I know, it is.

Q. You are pretty well acquainted with vessels of that type? A. Yes.

Q. How long have you been engaged in building ships of this kind and type?

A. Twenty-five years.

Q. I will ask you if the equipment of the seats and the floor and the arrangement of the cabin—is any part of the hull of that ship?

A. No, sir.

Cross-examination.

(By Mr. MARTIN.)

Q. As far as you know, Mr. Taylor, that is the standard type of construction? A. Yes, sir.

Q. How many vessels do you know about?

A. I know about all there is on Puget Sound.

Q. How many vessels on Puget Sound?

A. Well, about ninety plying passenger trade. I would not say how many around Seattle—I know those.

Q. How many?

A. I would not say how many—I think it has been stated here before.

Q. How many of these vessels are equipped with this center aisle and raised platform above the aisle, extending out to each side?

(Testimony of Charles E. Taylor.)

A. I would not say I knew how many. There are a good many.

Q. Well, how many vessels? [57—22]

A. I don't know how many.

Q. You couldn't tell us the name of one vessel equipped in that manner?

A. "Dr. Martin," the "Falcon" and another which I think is called the "Speeder," and the "Chicker"—

Q. How large is the "Chicker"?

A. About the size of the "Suquamish."

Q. How long? I mean the "Suquamish."

A. Around 80 or 90 feet.

Q. Is the "Chicker" that large?

A. I don't know.

Q. On what route did the "Chicker" run?

A. She has run here—I don't know where she is running now.

Q. When did you see her last?

A. I could not tell you that.

Q. Did you build her?

A. No, but I know such a one exists and carries passengers.

Q. When did you have occasion to examine her after-cabin to make a comparison between this vessel and that vessel?

A. I never did examine them.

Q. Well, then, how do you know she is equipped in a like manner?

A. I have seen them both and I know they are boats of that type.

(Testimony of Charles E. Taylor.)

Q. I asked you about the "Chicker"—you saw that condition—this raised platform, ten inches from the floor?

A. Cabin sunken down in the same way—there are raised places in those boats, even in the toilets and different places—where you step upon a platform—in boats of that kind. [58—23]

Q. Now, speaking, definitely, of the condition disclosed on the "Suquamish"—this center aisle, with a platform ten inches high, rows of seats extending one in front of the other, in the women's cabin. What vessel do you know of, you say this is a common type, that is equipped in the same manner and with this platform?

A. I don't know of two just the same—they have some of those features is what I mean.

Q. The fact is, Mr. Taylor, aren't there hundreds of vessels of the passenger type which have horizontal floors in the ladies' cabin?

A. Not always the full width, nearly all of them have platforms some place in them.

Q. But talking about ladies' cabins. Isn't it a fact that on passenger ships, it is the custom to have the flat horizontal floor?

A. On the larger vessels, yes.

Q. Vessels of the type and size of this one?

A. I don't know of any.

Q. If you don't know any constructed that way, what would you say is the number of those constructed as the "Suquamish"?

A. I say most all of them.

(Testimony of Charles E. Taylor.)

Q. Which ones would you point to?

A. Those I mentioned before?

Q. The two or three mentioned?     A. Yes.

Q. Now, about the platform being part of the hull. In the first place, the planking in the center aisle—that is right on the beams running across the ship?     A. Floor timbers, or beams. [59—24]

Q. Those floor beams are made fast to the ribs?

A. Maybe, nailed in there; fitted to it to support the weight of the floor.

Q. And the flooring put on those columns, tends to keep them in place?     A. Yes.

Q. Doesn't it perform the same office as the ceiling?     A. In no way.

Q. Adds no strength?

A. No, that is where the people walk—on the floor.

Q. Is it fastened permanently to the vessel?

A. Yes, with nails.

Q. You would not call nails fasteners in that case—?     A. Certainly.

Witness excused.

#### TESTIMONY OF J. L. ANDERSON, FOR PETITIONER.

J. L. ANDERSON, a witness called in behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BYERS.)

Q. State your name.

(Testimony of J. L. Anderson.)

A. J. L. Anderson.

Q. Where do you live? A. In Seattle.

Q. How long have you lived here?

A. About thirty-eight years.

Q. What is your business, or occupation?

A. Operator of steamboats.

Q. How long have you been an operator of steamboats? A. Thirty-eight years. [60—25]

Q. In Seattle and vicinity? A. Yes.

Q. What position do you occupy with the Kitsap Co. Transportation Company?

A. President and manager.

Q. What other companies are you associated with? A. The Anderson Steamboat Company.

Q. Are you acquainted with the gas screw "Squamish"? A. Yes.

Q. I ask you if you are acquainted with the seating arrangement in the ladies' cabin?

A. Yes.

Q. Is it the standard type of vessels of that character and size? A. Yes, it is.

Q. Have you operated other vessels of the same kind? A. Yes.

Q. Can you give the names of any of them?

A. The "Winifred" and the "Leschi."

Q. Where do you operate those?

A. On Lake Washington.

Q. I would ask you if the seating arrangement equipment is any part of the hull of the vessel?

A. No, sir.

(Testimony of J. L. Anderson.)

Q. By the way, Captain, you have built a good many vessels? A. Yes.

Q. How many about have you constructed about this size and type and larger?

A. Somewhere along about twenty-eight or thirty.

Q. You have been building and operating vessels for thirty-eight [61—26] years? A. Yes.

Cross-examination.

(By Mr. MARTIN.)

Q. Captain Anderson, isn't it true that there are more vessels or as many vessels not constructed as this one was as to the ladies' cabin?

A. No, not exactly.

Q. How many vessels of this general type of passenger ships operating for passenger service?

A. A good many of them operate of that type.

Q. Take vessels of the size of the "Suquamish." Isn't it true that you will find just as many vessels that have horizontal floors in the ladies' cabin as you find with an aisle and raised platform on each side? A. Practically the same.

Q. You find as many one way as you will the other? A. Yes.

Q. You say the floor is not a part of the hull?

A. No, sir.

Q. Well, the planks and board in the flooring are made fast to the floor timbers, aren't they?

A. There are beams in there; we call it false floor.

(Testimony of J. L. Anderson.)

Q. The floor beams are raised how much above the keel?

A. In this case something like, I didn't measure it, fourteen of fifteen inches.

Q. In other words there are beams—how far apart are the beams?

A. I never measured them.

Q. Approximately? [62—27]

A. Well, the standard distance would be 12 or 15 inches.

Q. And these beams go out to the sides and attach to the ribs, or frames, don't they?

A. No, in many cases, they are never fastened.

Q. But in this case, they are fastened to the frames? A. I am not sure.

Q. You heard Mr. Brinton, the man who designed the vessel, testify they were made fast to the frame? A. He may be right.

Q. And if they are made fast to the frames, certainly the floor timbers add strength to the vessel?

A. No, no strength to the vessel.

Q. The ship would be as well off as if it had never had them? A. No.

Q. And you say there are vessels constructed without the keelson? A. Lots of them.

Q. Do you mean to say that timbers placed any distance above the keel, made fast, securely on each side, do not strengthen the vessel by making the ribs more rigid? A. No.

Q. What about the deck beams?

A. That is an entirely different proposition.

(Testimony of J. L. Anderson.)

Q. Well, the flooring is made fast to the timbers, isn't it?     A. I am not sure it is.

Witness excused.

Petitioner rests. [63—28]

TESTIMONY OF CLYDE M. MOSES, FOR  
CLAIMANT.

CLYDE M. MOSES, a witness called in behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MARTIN.)

Q. State your full name.

A. Clyde M. Moses.

Q. Your mother, Mrs. Moses, was the person injured on board this vessel?     A. Yes.

Q. What was her name?     A. Ella J. Harvey.

Q. Were you with Mrs. Harvey at the time of this accident?     A. I was.

Q. How old was Mrs. Harvey?

A. She was seventy-three years old.

Q. She was stopping with you here in Seattle, on a visit?     A. Yes, she was.

Q. What was the date of this accident?

A. The 7th day of December, 1923.

Q. How was Mrs. Harvey dressed?

A. She had on a serge skirt with a black silk blouse and heavy top-coat—a long coat.

Q. How far down on her person would the coat come?



(Testimony of Clyde M. Moses.)

A. Nearly to the bottom of her skirt which was about four inches or five inches from the floor.

Q. You went with her on board the "Suquamish"? A. I did.

Q. And you paid fares as passengers?

A. Yes.

Q. To what point were you going? [64—29]

A. We were bound for Manitou Beach.

Q. And your destination was—?

A. Manitou Beach.

Q. Did you have occasion to go down into the ladies' cabin on the voyage over? A. Yes.

Q. And took your seats, did you? A. Yes.

Q. Describe the arrangement of the seats with reference to the center aisle.

A. Well, it was very similar to the seats on a street-car with a platform on either side of the aisle.

Q. And you and your mother entered these seats?

A. We did.

Q. What would you say is the distance between the seats?

A. Between the rows of seats? Well, I don't know just how to give the dimensions but I don't know that our knees touched the chair in front; but perhaps mother's did; she was taller than I.

Q. Did you notice that there was room to pass in front of your mother, going in or out?

A. There was not.

Q. Did you notice?

A. Yes, I did, especially.

(Testimony of Clyde M. Moses.)

Q. Where did you sit and where did your mother sit in these seats?

A. Mother sat next to the outside and I sat on the inside near the window.

Q. How many seats were there from the aisle over to the side of the vessel? [65—30]

A. I think just two.

Q. Your seat was near the window and your mother's near the aisle? A. Yes.

Q. Did you notice when you entered whether your mother's garment, her coat and skirt, would come down over the edge of this platform so as to hide the platform from view?

A. Yes, I think they would. Because of the closeness of the seats, the skirt came out over the edge of the platform.

Q. Did you have occasion to look?

A. I didn't have occasion to look but I thought of getting out of the seat but it meant for my mother to get out first—meant for her to step down for me to pass her.

Q. And you didn't attempt to make that change?

A. No.

Q. Will you please tell to the Court, Mrs. Moses, what you know of the injury to your mother and how she was hurt? Tell how it happened.

A. Well, she just fell.

Q. How did she fall? A. Sideways, of course.

Q. What was she doing when she fell—what did she attempt to do?

A. She attempted to leave her seat.

(Testimony of Clyde M. Moses.)

Q. How far had the vessel gone when your mother got hurt?

A. We had just reached the dock at Manitou Beach—were about ready to get out of our seats.

Q. What sort of passage had you had coming over—was there any movement of the vessel?

A. It was a bright, pretty day with some wind and the boat did [66—31] roll a little.

Q. Was there any movement of the vessel as it lay alongside the wharf as the passengers were preparing to go ashore?

A. The natural motion of the vessel bringing to tie up to let the passengers out.

Q. Tell what you saw from then on.

A. Well, the noise of the engines prevented me from hearing anything until I saw mother on the floor and her head nearly struck the edge of the opposite platform—just lacked a fraction of an inch.

Q. Did you see her fall?

A. Not actually fall.

Q. Did you see her attempt to rise?

A. I don't think so. I was looking out the window and I saw her on the floor in that aisle when I turned around.

Mr. MARTIN.—Your Honor, I think to shorten this matter and save time, the best way would be to go right through the case.

The COURT.—I am not familiar with the statutes here. Suppose the petition for limitation of

(Testimony of Clyde M. Moses.)

liability is denied, will the case be tried here on its merits?

Mr. MARTIN.—I understand the practice to be that if the petition for limitation of liability fails, the case is dismissed and we are permitted to proceed with our cause of action in the state courts.

Q. Mrs. Moses, what did you do after Mrs. Harvey had fallen into the aisle—she was in the aisle, wasn't she?

A. Yes. As soon as the boat was tied up, a couple of [67—32] passengers carried her upstairs and she was taken off the upper deck into the little waiting-room on the dock and we had to wait until Dr. Shepard came from Winslow and we got a wagon and sent to the school for a stretcher, which was just a bed and due to the defective dock, we were not able to drive the horse down to the waiting-room, so the men came and carried the bed to the Manitou Beach store and owing to the width of the bed, it could not be carried into the store and we had to put it on the side porch until the boat returned at 4:45.

Q. And she came back on the same boat?

A. Yes.

Q. She was taken aboard? A. Yes.

Q. On an improvised stretcher? A. Yes.

Q. To Seattle? A. Yes.

Q. And when you reached Seattle, she was taken to a hospital? A. Yes.

Q. How many weeks was she there?

A. Twenty days.

(Testimony of Clyde M. Moses.)

Q. And then from there where was she taken?

A. To my home on Everett Avenue.

Q. And she remained there how long?

A. Until the 30th day of last July.

Q. Then where did she go?

A. To Wisconsin.

Q. Is she there now?     A. She is. [68—33]

Q. During that time, how long was your mother confined to her bed after reaching your home—after leaving the hospital?

A. Well, I think she was in the cast six weeks and I think it was more than a month or six weeks before she could sit up at all. She had to be lifted from her bed and put back.

Q. Do you know the extent of her injuries?

A. Well, she had a broken hip and wrist—

Q. Had she recovered from those breaks when she left your home in July, 1924?

A. Her doctor is here, if you wish to ask him that question.

Q. Well, Mrs. Moses, from what you saw, was she able to go without the aid of crutches?

A. No, she was still on crutches.

Q. Did you pay out any money on her behalf for hospital, physician's and nursing bills?     A. Yes.

Q. What moneys were paid out—I will hand you these bills and I will ask you to pick them out and refer to them and hand them to me. (Hands witness a number of bills.)

A. Here is a bill that was paid to the Seattle General Hospital for \$187.00—

(Testimony of Clyde M. Moses.)

Mr. BYERS.—The deposition of Mrs. Harvey, your Honor, shows the sum that was paid.

Q. Mrs. Moses, have you ever been aboard this ship before? A. Yes, I had.

Q. How many times?

A. About twice.

Q. How long before were those two trips?

A. Well, the week before and then, perhaps, it was four [69—34] months before that, the first time.

Q. Did the vessel appear to be in the same condition as to the cabin then, on the occasion of your mother's injuries, as it was on the two previous occasions? A. Yes.

Q. With respect to seating conditions?

A. Yes.

Q. Had Mrs. Harvey been on board this vessel before? A. No, sir.

Q. Had she been with you at all times in your home from the time she came from Wisconsin?

A. Yes.

Q. And you would know, positively, that she had not been on that vessel?

A. Yes, we had planned our trip in order to take advantage of the extra service of Tuesdays and Saturdays.

Q. You would say, positively, that she had never been on this boat before? A. No, she had not.

Cross-examination.

(By Mr. BYERS.)

Q. Mrs. Moses, when you went in, you went in

(Testimony of Clyde M. Moses.)

first and sat down next to the window and your mother followed and sat on the outer seat, and the seats were arranged in pairs?     A. Yes.

Q. When you went into these seats, you, necessarily, had to step over and must have known there was a step there when you stepped up?

A. Perhaps.

Q. Now, the aisle between the steps is almost exactly like [70—35] the aisle between the steps leading up to the witness' chair and the step for the jury-box here, only the aisle is a little wider? (Indicating.)     A. Yes, I think so.

Q. And Mrs. Harvey had simply to look across to see a step on the other side?

A. If she had looked.

Q. And she could have looked if she wanted to?

A. She was not anticipating this fall.

Q. She could have seen this step—there was nothing to prevent her from looking—the step was in plain sight, was it not?     A. I suppose.

Q. Also, the step she took to get to the chair upon which she was seated was in plain sight when she took the chair?     A. I presume so.

Witness excused.

Mr. MARTIN.—Your Honor, we have the deposition of Mrs. Ella J. Harvey here in court and we would like to read it.

Mr. BYERS.—We will consent to this deposition being read in court if we are permitted to make the same objections as though the witness

were here in court and testifying in the witness-stand.

The COURT.—It may be so read.

(Mr. Martin reads deposition of Ella J. Harvey, as follows:) [71—36]

[Title of Court and Cause.]

DEPOSITION OF ELLA J. HARVEY.

BE IT REMEMBERED that heretofore and on, to wit, the ninth day of July, 1925, at two o'clock P. M., at 2207 Everett Avenue North, Seattle, Washington, before me, a notary public in and for the State of Washington, there appeared:

Mr. Herman S. Frye, an attorney at law, on behalf of Ella J. Harvey; and

Mr. Alpheus Byers, an attorney at law, on behalf of petitioner above named.

Also at the same time and place appeared Ella J. Harvey, who was duly sworn and gave her deposition as appears on the pages following; the taking of said deposition being in accordance with, and pursuant to, stipulation entered into by and between the above-named attorneys as follows:

It is hereby stipulated between the parties to the above-entitled action that the deposition of Ella J. Harvey may be taken on this the ninth day of July, 1925, on oral interrogatories propounded to the witness. All objections as to the time, place and manner of taking said deposition are hereby waived. All



(Deposition of Ella J. Harvey.)

objections as to materiality, relevancy, and competency of the questions and answers are hereby reserved and may be made at the trial of the above-entitled action. The signature of the witness is hereby waived. [72—37]

ELLA J. HARVEY, produced as a witness in her own behalf, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. FRYE.)

Q. Your name is Ella J. Harvey?

A. Yes, sir.

Q. How old are you, Mrs. Harvey?

A. Seventy-four.

Q. On or about the 17th day of December, 1923, were you a passenger on the steamer "Suquamish"? A. I was.

Q. You paid your fare, did you? A. I did.

Q. Where were you going?

A. Manitou Beach.

Q. Were you starting to Manitou Beach or were you returning?

A. I was going to Manitou Beach.

Q. And the boat was lying at the wharf at Seattle? A. Yes, so we could get on.

Q. You went aboard the boat, did you?

A. I did.

Q. Where did you go?

A. I went down two or three pair of stairs—narrow stairs, down into the passenger deck, I suppose it was.

(Deposition of Ella J. Harvey.)

Q. There were accommodations for passengers there?

A. There were seats there for them to climb up onto.

Q. Did you take a seat there? A. I did.

Q. Now, those seats are raised, are they not, above the— [73—38] about eight or ten inches above the floor? A. Yes, sir, they were.

Q. You stepped up and took your seat?

A. Yes, I did.

Q. What occurred after that, Mrs. Harvey?

A. Well, we rode over to the Beach—Manitou. The car started to stop. I stood up to get off. I didn't suppose you know—I had been on other boats that were all on one floor. Instead of that I fell.

Q. You stepped off the ledge?

A. I was going to step off. My feet didn't touch the floor. I went sideways.

Q. Did you notice this dropping off between the—

A. No, I didn't notice it. I had traveled on other boats across there. It was all on one floor. I never dreamed there was a place to break my neck there.

Q. You fell to the floor, did you?

A. I certainly did.

Q. Did you suffer any injury by that fall?

A. I had a broken wrist and a broken hip.

Q. Are you still suffering from those injuries?

A. I am.

(Deposition of Ella J. Harvey.)

Q. What have you expended, Mrs. Harvey, in nurse hire and doctor bills?

A. Didn't you get an account of that, Mr. Frye?

Q. Yes, I have it. I just wanted to get it in the deposition.

A. Since that was made out about a year ago or such a matter, I have paid out for more help.

Q. On September 4, 1924, I received a statement in which [74—39] up to that time you had expended the following items: Seattle General Hospital, \$561. Is that correct at that time?

A. That was correct.

Q. Dr. Dawson and Dr. James Burch, \$550. Is that correct? A. Yes, sir.

Q. Nurse hire, \$726; ambulance, \$11.

A. Yes.

Q. Wheel-chair, \$17.50; medicine, \$25. That made a total expense at that time of \$1,890. Is that correct statement of what you spent at that time? A. I think so.

Q. That was September 4, 1924. What has been your expenses since that time?

A. I spent \$325.

Q. Since September 4, 1924?

Mrs. MOSES.—That is including this.

A. That is besides. I don't mean I have paid that since.

Q. Since September 4 what other items of expense have been paid making up this \$325?

A. That \$325 is for nursing and helping me to get around when I can't wait on myself since.

(Deposition of Ella J. Harvey.)

Q. You have had a nurse right along?

A. Yes. I haven't had very much more medicine or anything. I have just been stiff; couldn't get around and wait on myself.

Q. That makes approximately \$2,215.50 that you have actually expended for doctors, medicines, nurse hire, and hospital bills since your injury?

A. Yes, sir. [75—40]

Q. Did anyone warn you of any danger there might be? A. On that boat?

Q. On the boat? A. Certainly not.

Q. Were there any signs of any kind indicating there might be any danger?

A. I didn't see any.

Cross-examination.

(By Mr. BYERS.)

Q. Who is your nurse?

A. I have had different nurses.

Q. Give us the names of them.

A. One is Mrs. Lossius.

Q. How much did you pay her?

A. I paid her—what was it—six dollars a day and her board—was that it (apparently asking Mrs. Moses)?

Mr. BYERS.—You must not ask her.

The WITNESS.—Well, I am afraid I haven't got it itemized right up to date.

Q. Well, can you give us approximately the amount? A. My checks will show it.

Mr. FRYE.—I have a little statement she made

(Deposition of Ella J. Harvey.)

to me at one time. Perhaps she can refresh her memory.

Mr. BYERS.—Sure.

(Mr. Frye hands paper to Mr. Byers.)

Q. You have here Miss Tilden \$185. That is a nurse, is it?

A. Miss Tedda. Mrs. Michelbust. Perhaps I haven't got—

Q. Yes, Mrs. Michelbust. Was that at the hospital? [76—41] A. No, that was here.

Q. That was here at the house. And Mrs.—

A. Gilda.

Q. I don't see that here.

Mr. FRYE.—Was that since September 4?

Q. Was that since March 29, 1924? Was Miss Tilda since March 29, 1924?

A. That is Miss Tedda.

Q. You don't have her here at all. Was that since March 1924?

A. I guess she was here until about the first of June.

Q. 1924? A. Yes.

Q. How much did you pay her?

A. \$25 a week.

Q. How many weeks did you have her here?

A. I would have to look at my check-book to see.

Q. When you went into this boat were you alone? A. I was not.

Q. Who was with you?

A. My daughter, Mrs. Moses.

(Deposition of Ella J. Harvey.)

Q. Mrs. Moses, your daughter, was with you. You stepped up a step? A. I certainly did.

Q. And then took a seat. There was nothing to prevent you from seeing that you stepped up?

A. Nothing at all.

Q. In fact you knew you stepped up?

A. Certainly.

Q. There was nothing to prevent you from seeing the step [77—42] when you went to get up?

A. From seeing?

Q. Yes, from seeing that you had to step down to the floor when you got up.

A. I sat right on the edge of the seat.

Q. There was nothing to prevent you from seeing the floor, was there?

A. Unless it was my clothes—my skirt.

Q. Did they prevent you from seeing the floor?

A. Well, I don't know how to answer you.

Q. Just tell me the truth, that is all, Mrs. Harvey. Did your clothes prevent you from seeing the floor?

A. I can't remember just how I sat, but I sat on the edge of the seat.

Q. I will return to my original question. Was there anything to prevent you from seeing the floor?

A. Nothing but carelessness maybe that I looked up instead of down.

Q. But you could have looked down if you had wanted to, couldn't you?

(Deposition of Ella J. Harvey.)

A. I suppose I could, I was looking to the door how to get out.

Q. Now, all the rest of the people sat on seats just the same as you, didn't they?

A. I suppose they did. I didn't look.

Q. You were there and looked and saw them?

A. There were very few there that day.

Q. So far as you know that is just the way the passenger cabin had always been. That is, there was nothing newly constructed that you saw, was there? [78—43]

A. I never was on there before.

Q. It had the appearance of being the same that the passengers' cabin had always been, didn't it?

A. Well, as far as I know.

Q. Was it in the daytime? A. Yes, sir.

Q. How long had it been from the time you got on until you reached the Beach in point of hours and minutes—do you remember?

A. Oh, I think about an hour.

Q. About an hour to make the trip?

A. I think so.

Q. You had been sitting in that chair all that hour? A. Yes, sir.

Q. Had you ever gotten up again— A. No.

Q. —before you finally got up?

A. I did not.

Q. When you were hurt was when you got up and were about to leave the boat? A. Yes, sir.

Q. That was the end of your trip? A. Yes, sir.

(Deposition of Ella J. Harvey.)

Q. Now, during all the time that you were going on that trip, Mrs. Harvey, was there anything to prevent you from looking down at the floor and seeing just how that step stepped off?

A. I don't know as there was.

Q. As a matter of fact, you did see it, didn't you?

A. I don't think I did. I don't think I even noticed it. [79—44]

Q. Didn't you notice it when you stepped up?

A. Certainly. Certainly I knew that.

Q. Well, when you noticed that you stepped up you would know that you would have to step down when you got off, wouldn't you?

A. I presume so.

Q. As a matter of fact, Mrs. Harvey, you just like a great many people—you just forgot—that is the solution, isn't it?

A. Well, I had not been used to riding on such a boat. I expected it would be on a level.

Q. You expected it would be on a level?

A. I expected it to be on a level with the water too.

Q. Where do you live, Mrs. Harvey?

A. My home is in Wisconsin.

Q. You have been around boats a great deal in your lifetime?

A. But very little. Last summer my daughter lived across the Sound.

Q. Before you came out here?

A. I didn't know anything about boats.



(Deposition of Ella J. Harvey.)

Redirect Examination.

(By Mr. FRYE.)

Q. Had you made the trip to Manitou on other boats? A. Yes, sir, on the "Vashon."

Q. Do you know whether or not that belongs to the Kitsap County Transportation Company?

A. I do not.

Q. Now, that makes a trip from Seattle to Manitou? A. Yes, sir. [80—45]

Q. Had you ever been aboard this boat before?

A. No, sir.

Q. Now, on the "Vashon" the seating accommodations are all on the level? A. All on the level.

Mr. BYERS.—I object to this because it is immaterial and incompetent. But I suppose we are reserving these objections.

Mr. FRYE.—Yes.

Mr. BYERS.—That will be all right, then.

Q. You had no reason to think that this was not on the level? A. No.

Mr. BYERS.—I think that is argumentative and suggestive.

Mr. FRYE.—I think perhaps it is.

(Deposition concluded.) [81—46]

State of Washington,  
County of King,—ss.

I, Arthur Royse, a notary public in and for the State of Washington, do hereby certify:

That the above deposition was taken before me and reduced to writing by myself at 2207 Everett Avenue North, Seattle, in said county, on the ninth

(Testimony of Dr. Lewis R. Dawson.)

day of July, 1925, at two o'clock P. M., in pursuance of stipulation set out on the first page hereof.

That the above-named witness, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth; and

That the signature of the witness to the deposition was expressly waived.

WITNESS my hand and official seal this eighth day of September, 1925.

[Seal] (Signed) ARTHUR ROYSE,  
Notary Public in and for the State of Washington, Residing in Seattle. [82—47]

TESTIMONY OF DR. LEWIS R. DAWSON,  
FOR CLAIMANT.

DR. LEWIS R. DAWSON, a witness called in behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MARTIN.)

Q. State your full name, Doctor.

A. Lewis R. Dawson.

Q. You are duly licensed in the practice of medicine? A. Yes.

Q. How many years have you been in Seattle?

A. Forty years.

Q. And you attended Ella J. Harvey on the occasion of the accident referred to here? A. Yes.

Q. Are you acquainted with her daughter, Mrs. Moses? A. Yes.

Q. Doctor, the record shows that this accident

(Testimony of Dr. Lewis R. Dawson.)

occurred on the 17th day of December, 1923. How soon do you recall that you attended Mrs. Harvey?

A. Well, they phoned me over long distance in the afternoon that they were coming over on the boat at five o'clock and to meet them with an ambulance and be prepared to take them to the hospital, and which I did.

Q. And as to the examination—what did you conclude as to her then condition of injury?

A. She was suffering pretty severely from pain and evidenced a fracture of the left thigh and the left arm just above the wrist; I made her as comfortable as I could that night and the next morning I examined her injuries and treated her. We also had an X-ray made.

Q. And did the X-ray confirm the diagnosis as to the fracture [83—48] in the hip joint and the arm?

A. Yes, there was a decided fracture in the hip joint—intracapsular fracture of the bones of the arm, which was very bad—

Q. Do you describe those two fractures, the ones—one to the hip and one to the wrist, as serious?

A. A fracture to the hip joint is always very serious as frequently it is impossible to secure a union inside of the capsular after an injury in that way and this was an aggravated case—a lady 74 years of age, the older, of course, the worse. This sort of injury is common to elderly people.

Q. How long did you continue to treat Mrs. Harvey?

(Testimony of Dr. Lewis R. Dawson.)

A. Practically until she went back home last summer, she was under my care—some time in June 1925.

Q. And during that time, do you recall how long Mrs. Harvey was compelled to remain in bed?

A. I looked up my notes to-day and found that she left the hospital on the 20th day after the injury; at the end of the month, I removed the cast dressing from the left arm for the first time and at the end of eight weeks, cut off the casts from her body and legs which were completely in a cast and which remained practically eight weeks and, following that, I would not be sure but my recollection is that one month from the day the cast was removed, was when she first sat up in a chair. It was four months that she was in bed before she was able to sit up.

Q. How long, Doctor, was it before she was able to leave her bed and be about on crutches or in an invalid's chair?

A. Well, she was unable to stand on her feet and her arm [84—49] being injured, she could not use crutches because her left arm was very badly fractured so that she was unable to use it. If her arm had not been hurt, she probably could have gotten along better. She was unable to stand on her feet or bear her weight even with support.

Q. Have you those notes with you, Doctor?

A. Yes. (Takes notes from pocket.) (Reads.) The cast was taken from her arm on January 6th, one day less than four weeks; on January 31st,

(Testimony of Dr. Lewis R. Dawson.)

six weeks, I removed the cast from her body; on April 6th I noted that she sat up in a chair and moved her left leg at the hip joint, and at which time I noted a muscular weakness and stiffness.

Q. Did you get a good union of the hip joint?

A. It was slightly impacted but with the support of the cast, I was able to unite this joint with a slight deformity; the angle of the upper end was a little bit changed. There was very little pain from the hip joint—not as much as in the

Q. Have you a record of when she was able to arm.

go about on crutches?

A. On the 13th of April, she was sitting up in a wheel-chair and had stood on her feet for a moment.

Q. Do you remember, Doctor, that she was able to go about on crutches before she left to any extent at all?

A. Well, by somebody steadying her, she was able to get across the room from her bed to a chair; that was her condition when she left Seattle; just *bearly* able, with assistance, to get to the automobile when she left.

Q. Now, that was in July, 1925. You haven't seen her since? [85—50] A. No.

Q. Was that injury, both injuries, painful—of a painful character and would you say she suffered any pain?

A. She suffered a great deal of pain in her back from the fall and also in the arm and also from

(Testimony of Dr. Lewis R. Dawson.)

the prolonged immobilization of the legs in the cast which was necessary to secure a union in the hip joint.

Q. How long did this condition of pain and suffering continue up until the time it practically disappeared?

A. She was unable to move her limbs without pain for a much longer period. She was gritty and would try to move them although it pained her and she could not move without pain.

Q. Would you say, from the nature of her injuries, that she was suffering pain to any extent when she left here?     A. I think she did.

Q. You think the pain continued more or less from December, 1923, down to July, 1925?

A. Yes.

Q. Would you say, Doctor, that her leg, the injured leg, was any shorter, or out of position, or whether she would have the same freedom of that leg as she would have had, or had, before the injury?

A. There was a slight degree of shortening because at the point of break, there was a little bend this way (indicating) instead of an angle like this and the break here in the bone bent up which caused a little shortness in length. However, so little, I don't think would make much difference, or annoyance in the use of her leg. If she were well in every other way and had complete use of [86—51] her limbs otherwise, I don't think this

(Testimony of Dr. Lewis R. Dawson.)

fracture of the hip joint now would cause her any inconvenience, if any.

Q. You think she could walk about as well as ever?     A. Yes.

Q. How about the use of her wrist?

A. That will never be completely restored because of the splintering of the bones being such as to make it impossible to secure a perfect union; the joint is stiffened and the whole hand stiffened and a little bit misplaced.

Q. Her hand is partially and permanently injured?     A. Yes.

Q. Do you recall in the payment of your bill, the amount?

A. \$550.00, I think, besides other incidentals which brought the entire bill to \$586.00.

Q. And, Doctor, that is the usual and reasonable charge for that service, covering the period of time you served her?     A. I think so.

Q. And you gave her more or less constant attention during that period?

A. For the first couple of months, daily, and sometimes I attended her twice a day when she suffered so severely from the pain in her back and throughout her limbs and arm.

Q. And that would be the usual and reasonable charge as is current among the regular physicians in Seattle?     A. Yes, I think so.

Witness excused. [87—52]

Mr. FRYE.—Your Honor, I would like to recall Mrs. Moses for a few moments.

The COURT.—Very well.

TESTIMONY OF MRS. CLYDE M. MOSES,  
FOR PETITIONER (RECALLED).

MRS. CLYDE M. MOSES, recalled on behalf of  
the petitioner.

Direct Examination.

(By Mr. FRYE.)

Q. Mrs. Moses, do you remember what you paid  
the Seattle General Hospital?

A. About \$187.00, I think.

Q. And that was the hospital charge, alone?

A. Yes, then we paid the nurses besides that.

Q. I will hand you this statement from these  
items you paid out and will ask you what did you  
pay the Seattle General Hospital and the nurses  
furnished by them from December 7th to the 27th?

A. \$439.00 including the day and night nurses  
and their board and the use of the operating-room  
and, I think, the X-rays.

Q. What did you expend for—

Mr. BYERS.—Your Honor, please, we think this  
is all leading.

—what did you pay to Dr. Shepherd?

A. \$10.00 for his services.

Q. Who were the nurses who attended your  
mother?

A. Well, we had the Seattle General nurses,  
trained nurses, for just a short time. Miss Tedder  
was the last trained nurse we had; after that, we  
had practical nurses.



(Testimony of Mrs. Clyde M. Moses.)

Q. Do you remember what amounts were paid to Miss Tedder?

A. \$185.00 for Miss Tedder. [88—53]

Q. What other nurses did you have?

A. Well, we had one practical nurse and I paid her \$200.00. The nurse who came home with mother from the hospital, who was at the house for a couple of days, and I paid her \$20.50. Miss Campbell and Miss Vernon were the night nurses. Miss Campbell charged \$5.50 per day and Miss Vernon charged \$5.00 per day.

Q. Were you compelled to buy a wheel-chair for your mother? A. We rented one.

Q. What did you pay for it?

A. \$1.50 per week and the transfer charges.

Q. Do you remember what it all amounted to?

A. I can't remember the figures now. It shows on the vouchers which you have.

Q. What did you say you spent for an ambulance?

A. \$11.00, \$5.00 to and \$6.00 from the hospital to our house.

Q. Now, after March 29th, 1924, what expense were you to on account of your mother in nurse hire and care?

A. Up to August 10th, up to the time she left; I think it was \$325.00. We had a practical nurse at \$25.00 per week for, I think it must have been—but you have the items there.

Q. And you paid \$325.00 for that? A. Yes.

(Testimony of Mrs. Clyde M. Moses.)

Q. What other expense were you to besides doctors, the Seattle General Hospital, nurses—any expense for medicines? A. Something like \$25.00.

Q. That makes practically a total, as per these receipts, of about \$2,215.50? [89—54]

A. Yes, I think so.

The COURT.—This is the same as Mrs. Harvey testified to.

Cross-examination.

(By Mr. BYERS.)

Q. Did you pay these bills or did your mother pay them? A. My mother paid them.

Q. Is there anything in there charged for your own services? A. No.

Witness excused.

Claimant rests.

Mr. BYERS.—Your Honor, we wish to move that this claim be dismissed because of the fact that there is no showing here at all of any negligence or anything upon which the petitioner is bound to respond in damages as far as the claimant is concerned. I think that the testimony here shows conclusively that everything was in plain sight and as she says, she could have seen the step but for her own carelessness. I don't see how anything could be made stronger than that. Those are the words of the claimant herself and I submit that without further argument, this claim should be dismissed.

Mr. MARTIN.—If your Honor please, under the statutes, it is the duty of the owner of a vessel to furnish a seaworthy vessel and to be properly

equipped and the right to limit is denied if the owners fail in this regard. (Further argument and citations.) All to the effect that, in view of the very high duty that the steamship companies owe to their passengers, that the question of negligence is a proper one [90—55] for the jury.

The COURT.—There could be the situation of a vessel being in a seaworthy condition and the fault be with the injured person.

Mr. MARTIN.—I don't think so, your Honor, if the person is hurt in the manner as the injury occurred here. It is our contention that the petition for limitation of liability should be denied. And further, your Honor, I think the burden here is on petitioner to show that this ship was not unseaworthy.

The COURT.—Yes.

Mr. BYERS.—Yes, your Honor, the burden is on the petitioner and, according to my ideas, that burden has not only been assumed, but established. We think that according to the witnesses and the testimony given, that the fact has been established that the fault was not ours.

The COURT.—I will take the matter under advisement.

Mr. BYERS.—Your Honor, must we now enter the balance of our testimony?

The COURT.—I assumed this was the trial of the case. However, you may proceed. I will deny the motion right here.

TESTIMONY OF PHILIP D. MACBRIDE, FOR  
PETITIONER (RECALLED.)

PHILIP D. MACBRIDE, recalled on behalf of  
the petitioner.

Direct Examination.

Mr. BYERS.—Q. I would like to ask you, Mr. Macbride, if this step is in plain sight of anyone going into the cabin? A. Entirely so.

Q. In order to take a seat, would the person have to make the [91—56] step that they retrace upon leaving the seat? A. Yes.

Q. Is the cabin well lighted, with full windows down both sides? A. Yes.

Q. Were these seats, themselves, in good order on the date of this accident? A. Yes.

Q. Is this seating arrangement usual in this class of vessels?

A. Yes—I think, about as Mr. Coolidge testified—

Mr. MARTIN.—We object, your Honor, to this witness testifying as to other vessels unless this witness knows the width of seats in other vessels.

—as customarily used. In some carriers,—the distance between the seats are practically uniform. All Puget Sound boats are about the same as in theatres.

Q. Did the chairs have arms by which to steady anyone getting up or down?

A. Yes, the arm of the chair is part of the casting from which the seat is made.

(Testimony of Philip D. Macbride.)

Q. How are the seats fastened to the raised platform? A. They are bolted down.

Q. Are they rigid? A. Entirely so.

Q. Now, compare it with the jurors' seats—the back seat of the jurors' box—and how does it compare with this seat? (Indicating.)

A. The seat is, of course, entirely different—it is a metal seat fastened to the floor. The height from the [92—57] gangway or aisle to the seat is considerably less than the height of the jurors'—a little lower than the height of the front row of the jury-box.

Mr. BYERS.—Your Honor, we offer for identification as Petitioner's Exhibit 2, this photograph.

Q. Is that a photograph of the cabin taken from the rear part of the cabin looking forward on the "Suquamish"? A. It is.

Mr. BYERS.—Your Honor, we offer this in evidence.

Mr. MARTIN.—There is no objection.

The COURT.—It may be admitted.

Cross-examination.

(By Mr. MARTIN.)

Q. Referring to this photograph which has just been introduced in evidence as Petitioner's Exhibit 2, there is no warning of any kind, no guard-rail, nothing to attract a person's attention to that raised platform?

A. It shows for itself, Mr. Martin.

Q. No such sign is exhibited?

A. No,—no sign other than the steps.

(Testimony of Philip D. Macbride.)

Q. No warning sign posted up there to be careful, step up or down, no admonition to passengers?

A. No, sir.

Q. But such signs could be posted there in various places about the room, couldn't they?

A. It is possible but it would not be as good a notice as the thing itself.

Q. The arms of the chairs in this photograph are shorter than these in the jury-box? [93—58]

A. They are the standard theatre seat arms.

Q. Shorter?

A. About the same as that arm but the support underneath comes up straight from the fastening on the floor so the arm extends beyond the support.

Redirect Examination.

(By Mr. BYERS.)

Q. There was no notice on the stairs to "step up" or "step down"? A. No.

Witness excused.

TESTIMONY OF J. L. ANDERSON, FOR PETITIONER (RECALLED).

J. L. ANDERSON, recalled as a witness on behalf of the petitioner.

Direct Examination.

(By Mr. BYERS.)

Q. This step, Captain Anderson, from the center aisle up to the small raised platform in which the chairs are arranged, about how high is it?

A. Ten inches.

(Testimony of J. L. Anderson.)

Q. Can that be seen by any passengers using the aisle?

A. Yes, they cannot help but see it.

Q. Is the cabin at all times well lighted?

A. Yes.

Witness excused. [94—59]

TESTIMONY OF FREDERICK S. BRINTON,  
FOR PETITIONER (RECALLED).

FREDERICK S. BRINTON, recalled as a witness on behalf of the petitioner.

Direct Examination.

(By Mr. BYERS.)

Q. You are a qualified Naval Architect?

A. I am.

Q. Mr. Brinton, explain to the Court the reasons why these chairs are placed upon this raised platform.

A. Well, the side of the boat comes in and if you didn't raise the platform you would not be able to get the width on the floor line and that would do away with half of the seating capacity. Another reason is so that the passengers can see out of the windows.

Q. In this class of vessels, is it customary to place any warning that a passenger, or prospective passenger, should "step up"?

Mr. MARTIN.—We object, your Honor, on the ground, first, that this witness is not qualified to answer and in the next place, it is a matter of law whether they should do that, or the situation re-

(Testimony of Frederick S. Brinton.)

quires it and whether it "is customary" is not proper.

The COURT.—I will make this ruling. Objection overruled; for counsel, exception noted, if the testimony is immaterial—the Court makes the decision.

A. No.

Cross-examination.

(By Mr. MARTIN.)

Q. You say this raised deck gives more seating capacity and [95—60] is raised in order to go out on a horizontal plane out to the side of the ship?

A. Yes.

Q. (Indicating.) What would have prevented boarding over here, this space, and having level decks?

A. You wouldn't have the head room.

Q. Then why not, if you constructed this vessel, why not give six inches raise on your deck?

A. On account of stability—you want to keep the center low.

Q. You say it is not customary to put up warning signs; on how many boats are they on?

A. I never saw any warning signs to step up—we have all signs made for vessels we design, and see that they are put up.

Q. But how many vessels on the Sound have you examined as to that condition?

A. I have never examined any of them for that particular purpose but I have been on a great many and I never saw it.

Witness excused.

Petitioner rests.



Mr. BYERS.—We renew our motion, your Honor, that this claim be dismissed.

Mr. MARTIN.—And we renew our request, your Honor, that the petition for limitation of liability be denied.

The COURT.—I will take this case under advisement. [96—61]

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[Title of Court and Cause.]

STIPULATION AS TO TRANSCRIPT OF EVIDENCE.

It is hereby stipulated by and between the Kitsap County Transportation Company, petitioner, through its proctors, Byers & Byers, and Ella J. Harvey, claimant, through Herman S. Frye and Winter S. Martin, that the foregoing statement, report and transcript of the trial of the above-entitled cause is a full, true, complete and properly prepared statement, report and transcript of all the evidence introduced upon the trial of said cause at the hearing on the merits in the above-entitled court at Seattle, King County, Washington, on the 16th day of March, 1926, before the Hon. George M. Bourquin, one of the Judges of said court, together with all objections and exceptions made and taken to the admission or exclusion of evidence and all motions and rulings by the court thereon made upon said trial, together with Petitioner's Exhibit No. 1 (Certificate of Inspection), and Petitioner's Exhibit No. 2 (Photograph), and

that no certificate of the trial Judge to said statement, report and transcript shall be required.

Dated at Seattle, Washington, June 2d, 1926.

[97]

KITSAP COUNTY TRANSPORTATION  
COMPANY.

By BYERS & BYERS,  
JOHN A. HOMER,

Its Proctors.

HERMAN S. FRYE,  
WINTER S. MARTIN,

Proctors for Ella J. Harvey, Claimant.

[Endorsed]: Filed Jun. 2, 1926. [98]

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[Title of Court and Cause.]

PRAECIPE FOR APOSTLES ON APPEAL.

To Ed. Lakin, Clerk of the United States District  
Court:

Please prepare the record on appeal and transmit to the Circuit Court of Appeals the following:

1. Caption exhibiting proper style of the court and title of the cause.
2. Statement showing time of commencement of suit, etc.
3. Petition for limitation of liability of the Kitsap County Transportation Company.
4. Answer to petition for limitation of liability and claim for damages for personal injuries of Ella J. Harvey.
5. Objections of petitioner to claim of Ella J. Harvey.

6. Memorandum decision of Bourquin, Judge.
7. Petitioner's petition for rehearing and for new trial.
8. Minute entry showing denial of petition for rehearing and for new trial.
9. Final decree of Court.
10. Exceptions of petitioner. [99]
11. Notice of appeal with admission of service.
12. Bond on appeal with notations of approval.
13. Transcript of trial, proceedings and evidence.
14. Stipulation as to evidence.
15. Assignments of error with admission of service.
16. Stipulation as to record and apostles on appeal.
17. Praecipe for apostles on appeal.
18. Stipulation as to transmittal of original exhibits.
19. Order directing transmittal of original exhibits.
20. Clerk's certificate.
21. Citation on appeal, with admission of service.  
BYERS & BYERS and  
JNO. A. HOMER,  
Proctors for Petitioner.

[Endorsed]: Filed Jun. 2, 1926. [100]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO APOSTLES ON APPEAL.

United States of America,  
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 100 inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the apostles on appeal herein, from the judgment of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses and costs incurred in my office on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [101]

Clerk's fees (Act of Feb. 11, 1925), for making record, certificate or return, 245  
folios at 15¢ ..... \$36.75

Certificate of Clerk to Transcript of record, with seal .....	.50
Certificate of Clerk to Original exhibits, with seal .....	.50
<hr/>	
Total .....	\$37.75

I hereby certify that the above cost for preparing and certifying record, amounting to \$37.75, has been paid to me by the proctors for the appellant.

I further certify that I herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, this 21st day of June, 1926.

[Seal] ED. M. LAKIN,  
Clerk United States District Court for the Western  
District of Washington.

By S. E. Leitch,  
Deputy. [102]

[Title of Court and Cause.]

CITATION.

The President of the United States to Ella J. Harvey, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California, on the 2d day of July, one thousand nine hundred and twenty-six, pursuant to an appeal *from a District Court* of the District

Court of the United States for the Western District of Washington, Northern Division, in a certain cause in admiralty, wherein you are claimant, to show cause, if any there be, why the decree rendered against the Kitsap County Transportation Company, petitioner, dismissing its petition for limitation of liability, should not be corrected and reversed and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the City of Seattle on the 2d day of June, in the year of our Lord one thousand nine hundred and twenty-six, and the 151st year of the Independence of the United States.

[Seal]

JEREMIAH NETERER,

United States District Judge. [103]

Service of the foregoing citation is hereby admitted this 2d day of June, 1926.

WINTER S. MARTIN,

HERMAN S. FRYE,

Proctors for Ella J. Harvey, Claimant.

[Endorsed]: Jun. 2, 1926. [104]

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[Endorsed]: No. 4889. United States Circuit Court of Appeals for the Ninth Circuit. Kitsap County Transportation Company, a Corporation, Appellant, vs. Ella J. Harvey, Claimant of the Gas Screw "Suquamish," Her Tackle, Apparel and Furniture, Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for

the Western District of Washington, Northern Division.

Filed June 23, 1926.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 9609.

KITSAP COUNTY TRANSPORTATION COM-  
PANY, a Corporation of the State of Wash-  
ington, Owner of the Gas Screw "SUQUA-  
MISH," Her Tackle, Apparel and Furniture,  
for Limitation of Liability.

KITSAP COUNTY TRANSPORTATION COM-  
PANY, a Corporation,

Petitioner,

vs.

ELLA J. HARVEY,

Claimant.

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO ORIGINAL EXHIBITS.

United States of America,

Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States Dis-

trict Court for the Western District of Washington, do hereby certify that the enclosed exhibits are the original petitioner's exhibits introduced and admitted in evidence at the trial of the above-entitled cause in said District Court, which are directed by order of Court herein to be forwarded to the Circuit Court of Appeals for the Ninth Circuit, to be considered by it as a part of the record on appeal herein in lieu of copies of said exhibits.

WITNESS my hand and the seal of said District Court, at Seattle, this 21st day of June, 1926.

[Seal]

ED. M. LAKIN,  
Clerk.

By S. E. Leitch,  
Deputy.

Filed Jun. 23, 1926.

F. D. MONCKTON,  
Clerk.



(3rd Ed.)

THIS CERTIFICATE EXPIRES

May 15

, 1924

UNITED STATES OF AMERICA DEPARTMENT OF COMMERCE STEAMBOAT-INSPECTION SERVICE

CERTIFICATE OF INSPECTION FOR STEAM OR MOTOR VESSEL

State of WASHINGTON

District of SEATTLE

Passenger

Vessel

SUQUAMISH

APPLICATION in writing having been made to the undersigned, Inspectors for this District, to inspect the above-named vessel propelled by crude oil, of Seattle, in the State of Washington

whereof The Kitsap County Transportation Company is owner, and Wallace O. Hanson is Master, said inspectors, having completed the inspection of the vessel on the 15th day of May, 1923, DO CERTIFY that the said vessel was built at Seattle, in the State of Washington, in the year 1914; rebuilt in the year 1 - ; that the Hull is constructed of Wood; and, as shown by official records, is of 75 gross tons; that the said vessel has Staterooms and Berths, and is allowed to carry 140 passengers, viz: 146 First cabin, - Second cabin, and - Deck or Steerage Passengers.

Included in the entire crew hereinafter specified and designated there must be two certificated lifeboat men.

This vessel is required to carry an alternate crew when operating more than 16 hours in any one day.

also is required to carry a full complement of licensed officers and crew, consisting of Master, Master and Pilot, 1 Pilot, - Chief Mate, - Second Mate, - Third Mate, - Inland Mate, - Chief Mate and Pilot, - Second Mate and Pilot, - Third Mate and Pilot, - Inland Mate and Pilot, - Quartermaster, - Able Seamen, - Seamen, - Apprentices, 2 Deck Hand, 1 Chief Engineer, - First Assistant Engineer, - Second Assistant Engineer, - Third Assistant Engineer, - Junior Engineer, - Water Tender, - Oiler, - Firemen, - Coal Passer, - Wiper, - Watchmen, and also - persons when needed in Steward's and other departments not connected with the navigation of the vessel; that the said vessel is provided with 1 Semi Diesel Condensing Engine of 100 inches diameters of cylinder and one foot stroke of piston, and - Boiler, - feet in length and - inches in diameter, made of lawl, in the year 1 - , rebuilt in the year 1 - . The said vessel is permitted to navigate, for one year, the waters of the Puget Sound

between Seattle and all points, and touching at intermediate ports, a distance of about 40 miles and return.

We further certify that the said vessel at the date hereof is, in all things, in conformity with the laws governing the Steamboat-Inspection Service and the Rules and Regulations of the Board of Supervising Inspectors.

THE FOLLOWING PARTICULARS OF INSPECTION ARE ENUMERATED, NAMELY:

Table with columns: Anchors, Cables, Auxiliary life-saving appliances, MAIN BOILERS, and DONKEY BOILERS. Contains detailed inspection criteria and findings for various vessel components.

State of WASHINGTON City of SEATTLE Charles H. White, Inspector of Hulls. Savine L. Craft, Inspector of Boilers.

Subscribed and sworn to before me this 17th day of May, 1923, by Charles H. White, Inspector of Hulls, and by Savine L. Craft, Inspector of Boilers.

Office of U. S. Local Inspectors, District of (Port) Seattle, Wash. May 17, 1923 Deputy Collector

WE HEREBY CERTIFY that the above certificate is a true copy of the original issued by this office to the vessel named herein.

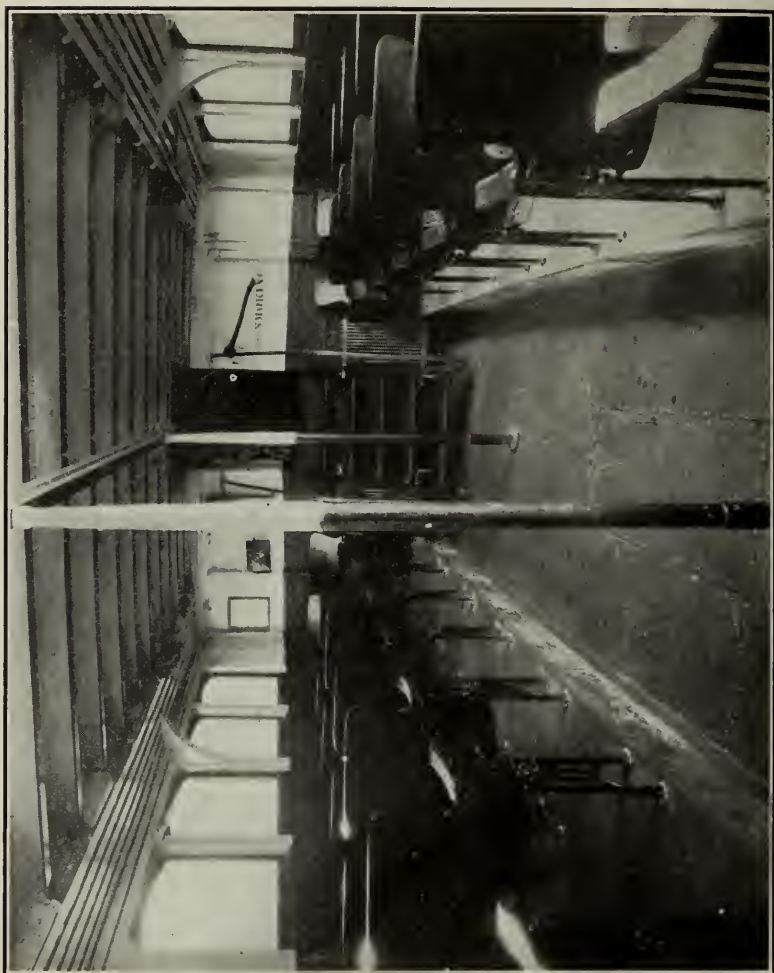
Inspector of Hulls. Thomas Short, Inspector of Boilers.

On vessels of over 25 gross tons, the original certificate must be framed under glass and posted in a conspicuous place in the vessel where it will be most likely to be observed by passengers and others. On vessels of not over 25 gross tons, the original certificate must be kept on board to be shown on demand. (Section 445, Revised Statutes.) Steam pleasure yachts are forbidden to carry merchandise or passengers for pay, unless upon change of character by the Inspectors of the Steamboat-Inspection Service.



[Endorsed]: Petitioner's Exhibit No. 1. No. 4889. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 23, 1926. F. D. Monckton, Clerk.

PETITIONER'S EXHIBIT No. 2.



[Endorsed]: Petitioner's Exhibit No. 2. No. 4889. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 23, 1926. F. D. Monckton, Clerk,